121-121

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1883.**

No. 376. 119

THE TOWN OF BLOOMFIELD, PLAINTIFF IN ERROR,

*vs.*

THE CHARTER OAK NATIONAL BANK OF HARTFORD, CONNECTICUT.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

**FILED OCTOBER 9, 1883.**

121-175

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## OCTOBER TERM, 1885.

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1, 2, & 3 *Petition for Writ of Error.*

Circuit Court of the United States, District of Connecticut.

THE CHARTER OAK NATIONAL BANK *v.* THE TOWN OF BLOOMFIELD.

To the honorable the judges of the circuit court of the United States for the second circuit and district of Connecticut:

The petition of the said Town of Bloomfield, defendants in the above-entitled action, respectfully represents that it is ag-rieved by the final judgement rendered against them in the said action upon the docket of this court, and is informed that there is error therein to its prejudice, and it is desirous that a writ of error be allowed them therefrom to the Supreme Court of the United States.

Wherefore it prays that a writ of error be allowed to it, returnable to the next term of the Supreme Court of the United States, and that the same may operate as a supersedeas.

THE TOWN OF BLOOMFIELD,
By its Attornies, PERKINS & EGGLESTON.

4 Know all men by these presents that The Town of Bloomfield, in Hartford county and State of Connecticut, as principal, and John Blackwell, of said Bloomfield, as surety, are holden and firmly bound unto The Charter Oak National Bank of Hartford, in said county and State, in the full and just sum of thirty thousand dollars, to be paid to said Charter Oak National Bank, its successors or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Whereas lately at a term of the circuit court of the United States held at Hartford, in the State and district of Connecticut, on the third Tuesday of September, A. D. 1882, in a suit depending in said court between said Charter Oak National Bank and said Town of Bloomfield, judgment was rendered against the said Town of Bloomfield for the sum of $19,433.30, debt, and $263.46, costs, and the said Town of Bloomfield having obtained a writ of error in said cause to the Supreme Court of the United States and filed a copy thereof in the clerk's office of said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Charter Oak National Bank citing and admonishing it to be and appear
5 before said Supreme Court:

Now, the condition of the above obligation is such that if the said Town of Bloomfield shall prosecute said writ of error to effect and pay said judgment and costs and all damages and costs if it fail to make said plea in said writ of error good, then the above obligation to be void; otherwise to be and remain in full force and virtue.

Signed, sealed, and delivered on this 16th day of July, A. D. 1883.

TOWN OF BLOOMFIELD, [L. S.]
By JOHN BLACKWELL,
*First Selectman.*
JOHN BLACKWELL. [L. S.]

Approved July 16th, 1883, the said bond being a supersedeas of execution until the mandate of the Supreme Court is received.

N. SHIPMAN,
*District Judge.*

6 The President of the United States of America to the judges of the circuit court of the United States for the second circuit and district of Connecticut, Greeting:

[SEAL.]

Because in the record and proceedings as also in the rendition of a judgement in a plea which is in the said circuit court before you, between The Charter Oak National Bank, a corporation located in Hartford, Connecticut, plaintiff, and The Town of Bloomfield, a municipal corporation located in said State, defendant, a manifest error hath happened, to the great damage of the defendant, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgement be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1883, in the said Supreme Court to be then and there held, that, the record and
7 proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Hon. Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 16th day of July, A. D. 1883.

E. E. MARVIN, *Clerk.*

Allowed:

N. SHIPMAN,
*District Judge.*

8 The President of the United States of America to the Charter Oak National Bank, of Hartford, in the State and district of Connecticut, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October, A. D. 1883, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the second circuit and district of Connecticut, wherein the Town of Bloomfield, a municipal corporation of the State of Connecticut, is the plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said
9 plaintiff in error in said writ mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 16th day of July, 1883.

N. SHIPMAN,
*District Judge.*

Service of the above is hereby admitted.

CHARTER OAK NAT'L BANK,
By HUBBARD, HYDE & GROSS, *Att'ys.*

10 The return of the judges of the circuit court of the United States for the district of Connecticut to the foregoing appeal, the record, proceedings, and judgement whereof mention is therein made, follow in these words, viz:

THE CHARTER OAK NATIONAL BANK *v.* THE TOWN OF BLOOMFIELD.

Be it remembered that on the 5th day of June, 1880, there was filed in the circuit court of the United States for the district of Connecticut a declaration, in the words and figures following, viz:

11 The President of the United States of America to the marshal of the United States for the district of Connecticut, Greeting: [SEAL.]

You are hereby commanded to summon The Town of Bloomfield, in the county of Hartford and State and district of Connecticut, to appear before the circuit court of the United States of America for the district of Connecticut, in the second circuit, to be held in the city of Hartford, in the said district of Connecticut, on the third Tuesday of September, 1880, to answer unto The Charter Oak National Bank, a banking association established in said district of Connecticut under the laws of the United States providing for national banking associations, and located and having its principal office and place of business in the said city of Hartford, in a civil action, wherein the plaintiff complains and says:

*First Count.*

1. The plaintiff, on June 20th, 1879, lent to the defendant fifty-five hundred (5500) dollars.

12 2. On said June 20th, 1879, the defendant made its promissory note of that date for said sum of $5,500, signed by S. J. Mills, three months after date, at Charter Oak National Bank, value received.

3. On said day said S. J. Mills endorsed said note to the plaintiff.

4. Said note is now the property of the plaintiff, and has not been paid.

5. The defendant has not paid said sum so lent as per paragraph 1.

The plaintiff claims twenty-five thousand dollars damages.

(Loren P. Waldo, of Hartford, Connecticut, is recognized in $100, to prosecute, &c.)

Of this writ, with your doing thereon, make due return.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Hartford, in said district, this 5th day of June, A. D. 1880.

E. E. MARVIN, *Clerk.*

13 UNITED STATES OF AMERICA.

DISTRICT OF CONNECTICUT, } ss.
*Hartford County,* }

BLOOMFIELD, *June 5*, 1880.

Then and there I served the within writ on the Town of Bloomfield by delivering to and leaving with John E. Cox, the clerk of said town, a true and attested copy hereof.

Attest: JOS. D. BATES,
*U. S. Marshal.*

Fees:

| | |
|---|---|
| Service | 2 00 |
| Copy & end. | 1 00 |
| Travel | 96 |
| | 3 96 |

14 And on the same day Messrs. Waldo, Hubbard & Hyde entered their appearance for the plaintiff, and on the 13th day of September, 1880, A. F. Eggleston entered his appearance for the defendant.

And on the 15th day of December, 1880, defendant's answer was filed in the words and figures following, viz:

*Defendant's Answer.*

15 U. S. Circuit Court, Dist. of Conn. Sept. T., 1880.

THE CHARTER OAK NAT. BANK
*vs.*
THE TOWN OF BLOOMFIELD.

For defence to first count:

1. Paragraph first is denied.
2. Paragraph second is denied.

For further answer and defence to paragraph second:

1. Defendant denies the execution and delivery of the promissory note in said paragraph described.

2. The defendant denies that said Mills, as treasurer of the defendant town, had authority to make and sign the promissory note aforesaid.

For answer and defence to paragraph third the defendant says:

3. That said note was made and endorsed by said Mills, if at all, without authority or knowledge of the defendant, and in fraud of the rights of defendant, and solely for his own accommodation; of all which the plaintiff had knowledge, and that the plaintiff
16 is not a holder in good faith of said promissory note for value; that said note was the result of antecedent notes running through a long period of years, all made by the said Mills, and discounted by the plaintiff for the sole accommodation of said Mills; that the same were discounted at extravagant and ominous rates of

discount, while the financial credit of the defendant was of the highest character, and such as easily to command loans at reasonable and lawful rates of interest; that no part of the proceeds of said note, or of any of its predecessors for which this note was given in renewal, ever came to the defendant, but the same was appropriated by the said Mills for his sole benefit.

That said Mills was a customer of said bank, and, in the course of six years just preceding the maturity of this note, said bank discounted, in original and renewal negotiable paper, a large amount, to wit, an amount exceeding $200,000, for the sole benefit and accommodation of said Mills, and in fraud of the Town of Bloomfield;

17 all of which paper was made by the said Mills without authority in the name of S. J. Mills, treasurer, and all of which paper was concealed from the Town of Bloomfield, and no part of the discount of any of said paper was ever received by the defendant, and the said discounts were all irregular, unusual, and out of the ordinary course of business; all of which said bank had full knowledge.

4. Paragraph fourth is denied.

5. Paragraph fifth is admitted as to the non-payment of said sum by the defendant.

For answer and defences to second & 3d counts:

1. To the several paragraphs in the 2nd and 3rd counts, respectively, the defendant answers in the same manner as to the corresponding paragraphs in first count.

TOWN OF BLOOMFIELD,
By ARTHUR F. EGGLESTON,
*Its Att'y.*

18 And on the 19th day of September, 1882, complainant's replication was filed, in the words and figures following, viz:

*Replication.*

U. S. Circuit Court, Dist. of Connecticut. Sept. T., 1882.

THE CHARTER OAK NAT'L BANK *v.* THE TOWN OF BLOOMFIELD.

1. Paragraph 2 of the defendant's answer to the second paragraph of the complaint is denied.

2. Paragraph 3 of the defendant's answer is denied.

The same replication is made to so much of the defendant's answer as applies to the same paragraphs of the second and third counts.

PL'FF,
By HUBBARD, HYDE & GROSS.

19 And at the term of said court held at Hartford, on the third Tuesday of September, 1882, the plaintiff, by Messrs. Hubbard, Hyde & Gross, its attorneys, duly appeared to prosecute said suit, and the defendant, by Messrs. Eggleston and Perkins, its attorneys, also appeared.

Wherefore the marshal of the district of Connecticut is commanded that he cause to come here immediately twelve, &c., by whom, &c., and who, &c., to recognize, &c., because as well, &c., and the jurors of the said jury, by the marshal, for this purpose empannelled and returned, to wit: Isaac Alcott, E. F. Apply, J. L. Hayden, D. M. Howard, Louis Linmenneaux, Calvin Z. Parmelee, Albert F. Preston, Havilah Prior, John C. Rockwell, Simeon O. Vinton, Alfred Wetherwell, George Simpson, who being called come, and who, being elected, tried, and sworn to speak the truth of and concerning the premises, upon their oaths say as follows:

*Verdict.*

United States Circuit Court, District of Connecticut. September Term, 1882. At Law.

THE CHARTER OAK NATIONAL BANK *vs.* THE TOWN OF BLOOMFIELD.

20 In this case the jury find the issues for the plaintiff and therefore find for the plaintiff to recover of the defendant the sum of $19,433.30 and the costs of suit.

Hartford, Oct. 9, 1882.

CALVIN Z. PARMELEE,
*Foreman of the Jury.*

Wherefore it is considered by the court here, this 9th day of October, A. D. 1882, that in this case the issue is for the plaintiff, and that the plaintiff do recover of the defendant the sum of nineteen thousand four hundred and thirty-three $\frac{30}{100}$ ($19,433.30) dollars and costs.

And thereupon the defendant, being desirous of bringing a writ of error, procured to be signed and filed the following bill of exceptions:

21 Circuit Court of the United States, District of Connecticut. September Term, 1882.

THE CHARTER OAK NATIONAL BANK OF HARTFORD

*vs.*

THE TOWN OF BLOOMFIELD.

Be it remembered that this suit was brought by The Charter Oak National Bank of Hartford, a banking association duly organized under the laws of the United States, to recover from the Town of Bloomfield the amount due upon the three following-described notes, to wit:

$5,500. HARTFORD, *June* 20, 1879.

Three months after date The Town of Bloomfield promise to pay to the order of S. J. Mills fifty-five hundred dollars at Charter Oak National Bank. Value received.

S. J. MILLS,
*Treasurer.*

Endorsed: S. J. Mills.

$4,433.30. HARTFORD, *June* 21, 1879.

Three months after date The Town of Bloomfield promise
22 to pay to the order of S. J. Mills forty-four hundred and thirty-three $\frac{30}{100}$ dollars at Charter Oak National Bank. Value received.

S. J. MILLS,
*Treasurer.*

Endorsed: S. J. Mills.

$9,500. HARTFORD, *July* 1, 1879.

Three months after date The Town of Bloomfield promise to pay to the order of S. J. Mills ninety-five hundred dollars at Charter Oak National Bank. Value received.

S. J. MILLS,
*Treasurer.*

Endorsed: S. J. Mills.

It was admitted that these notes were drawn and signed by Samuel J. Mills as treasurer of the said town, and endorsed by him, and that he was elected treasurer of The Town of Bloomfield on the 5th day of October, 1868, and was re-elected annually thereafter, and acted as such treasurer until the 16th day of July, 1879, when he resigned.

The Town of Bloomfield was incorporated in the usual manner of Connecticut towns by resolution of the General Assembly of Connecticut passed at its May session, 1835, wherein and whereby the inhabitants of said town and their successors forever residing therein were "empowered to have and enjoy all the powers, privileges,
23 and immunities which are enjoyed by other towns in this State, with the privilege of sending one representative to the General Assembly of this State."

To the admission of the above notes in evidence the defendant objected, on the ground that the plaintiff had shown no authority on the part of the defendant to the said Mills to borrow money or execute notes.

The court admitted said notes in evidence, subject to the duty of the plaintiffs to prove such authority, to which ruling the defendant excepted.

The plaintiff then offered in evidence a duly-certified copy of a vote of said town, passed on the 5th day of October, 1868, which was as follows:

At an annual town meeting, legally warned and held at the usual place, October 5, 1868—S. J. Mills, moderator; H. W. Rowley, ass't town clerk—voted that hereafter the town treasurer be authorized and empowered to borrow money for the use of the town.

Recorded by S. B. Colton, town clerk.

The above is as appears of record.

Bloomfield, Ct., Feb. 16, 1877.

Attest: J. E. COX,
*Town Clerk.*

To J. F. Morris, Esq., Hartford.

24 The defendant objected to the admission of said vote in evidence upon the ground that the statutes of the State of Connecticut in force at the time said meeting was held required that the warning of every town meeting should specify the objects for which such meeting was to be held, and also upon the ground that votes upon subjects not so contained in said warning were void; that the burden of proof was on the plaintiff to show that such warning contained such notice, and for the reason that the plaintiff offered no evidence that the warning of the town meeting in question specified any such object as that contained in said vote.

It was also admitted that the statutes of Connecticut at said time further required that a copy of the warning of every town meeting should be deposited by the selectmen with, and should be recorded by, the town clerk, and that the warning in question had not been so recorded by the town clerk, and also that at the time of the trial and during the preparation of the case no copy of the warning was on file in the town clerk's office. The court overruled said objection and admitted said vote in evidence, not as showing a legal or valid vote of the town, but subject to the duty on the part of the
25 plaintiff to prove that the town, at its first meeting, by its affirmative acts and conduct, had assented to and treated as authoritative the power of the treasurer under said vote to borrow money for the use of said town, or for the purpose of establishing that by the course of conduct of the town in its town meeting it had practically established the authority of the treasurer under said vote, and of establishing an estoppel *in pais* against the power of the town to treat as invalid a vote the validity of which had been affirmatively declared by its acts, if it should appear that the defendant had intentionally caused the plaintiff to believe in a state of facts which it now claims not to exist, and induced it to act on such belief; to which ruling the defendant duly excepted.

The plaintiff thereupon, for the purpose of proving that the town had made the said Mills its general agent-in-fact to borrow money, and had, its town meetings, and by its affirmative acts in said meetings treated the treasurer as authorized under said vote to borrow money for the town, offered in evidence forty-four notes, aggregating in all more than sixty-four thousand dollars, which had been made and executed by said Mills, as treasurer, on behalf of the town, to sundry persons, mostly citizens of Bloomfield, other than the
26 plaintiff between the time of the passage of the vote in 1868 and his resignation as treasurer in 1879, upon which there were endorsements of payments of interest from time to time, and all of which notes had been paid and taken up.

The plaintiff also offered in evidence copies of the annual printed reports from 1869 to 1879, inclusive, made by the selectmen of the town to the town in its annual town meetings assembled, together with the treasurer's annual report as appears therein and the records of the town meetings showing the action of the town thereon, a copy of which annual reports and records are annexed and marked Exhibit "A." The several lists of payments of interest on town notes contained in said selectmen's reports comprise, among other

items, the payments of interest upon the forty-four notes mentioned above. To this evidence the defendant objected as immaterial and irrelevant. But the court overruled said objection and admitted said evidence for the purpose hereinbefore stated in admitting the copy of said town vote, and the defendant duly excepted. The plaintiff also, for the same purpose, offered the warning of and vote passed at a special town meeting passed on the 29th day of May, 1880, which are as follows:

27 At a special town meeting, legally warned, and held at the usual place May 29th, 1880—T. J. Jerome, moderator; John E. Cox, town clerk—the following preamble and accompanying resolutions were passed, viz:

Whereas certain parties have loaned money to the Town of Bloomfield, in evidence of which they hold certain memoranda of indebtedness, signed by the selectmen or other officers of said town, and all bearing date July 1st, 1879, which loans are still outstanding and unpaid; and whereas it is advisable that said town give its notes for the same and cancel said memoranda of indebtedness:

Voted, That DeForrest H. Peck, Alfred N. Filley, & Edgar W. Pinney, selectmen, be, and they are hereby, empowered and authorized, for and in behalf of said town and in the name of said town, to make, sign, and deliver the promissory notes of said town, bearing interest and payable at such time and at such rate of interest, not exceeding five and one-half per cent., as to said selectmen may seem advisable, to the parties aforesaid or to their order, and to take up and cancel the aforesaid memoranda of indebtedness.

Voted to adjourn.

Attest: JOHN E. COX,
*Town Clerk.*

28 And also offered evidence to show that in pursuance of said vote the selectmen of said town did thereafter take up sixteen notes in number, signed by Mills as treasurer, amounting in all to twenty-seven thousand three hundred and twenty-eight & $\frac{16}{100}$ dollars, and four others signed by said Mills as such treasurer, and also by the selectmen, amounting to seventeen thousand eight hundred & fifty-six & $\frac{15}{100}$ dollars, and caused new ones to be given in their place.

On July 1st, 1879, when said notes were given, the various persons to whom said notes were given, and who previously held notes in the same several amounts against said town signed by Mills as treasurer, met the said treasurer at the town clerk's office, at which meeting the selectmen of said town of Bloomfield were present, and that the said S. J. Mills, as treasurer, then and there took up and cancelled the old notes which he had previously given to said several parties, and gave new notes for the amount due them, reducing the interest to five per cent. per annum in renewal of or substitution for the notes previously held by said several parties. And these notes were subsequently all taken up or paid by the selectmen under said vote of May 29, 1880.

To the admission of this evidence the defendant objected
20 on the ground that it was immaterial, but the court admitted
the evidence for the same reasons as above, and the defend-
ant duly excepted.

The above comprises all the acts of the town in town meetings assembled which the plaintiff offered in evidence.

The plaintiff's account with Samuel J. Mills, as such treasurer, commenced in March, 1871, and continued until July, 1879. The first note which he procured to be discounted as such treasurer was discounted on the 24th day of March, 1871, and thereafter he continuously obtained discounts and renewals of old notes until the date of the last note, when the three notes in suit were outstanding.

The aggregate of his account was over two hundred and fifty thousand dollars.

In this account he deposited moneys of the town, and without the knowledge of the plaintiff, small amounts of his own, and checked out from said account both for the use of the town, and without the knowledge of the plaintiff, small amounts for himself.

The plaintiff offered evidence to show and attempted to trace each note in suit, so as to show that nearly the whole amount of the proceeds of said notes went to the use of the town, and that nearly
30 all of the checks drawn against said proceeds were given to inhabitants of the town in payment of town orders given by the selectmen. But no evidence was offered to show that the town in its town meeting assembled knew that said Mills kept his bank account with the plaintiff, or that he was borrowing the money represented by these notes, or those of which these were renewals, of the plaintiff.

The plaintiff disclaimed any advantage by virtue of being endorsee of the notes rather than payee, and did not claim that it stood on that account in any other relation to the defendant than if it had been the payee.

The plaintiff also offered evidence which the defendant claimed showed that at the time when the bank first obtained a copy of said vote from the town clerk of said town, viz., on the 22d day of February, 1877, all the moneys represented by the notes in suit had been advanced to said Mills, treasurer, before said date, except the sum of $1,500, and the notes in suit, except so far as said $1,500 was concerned, were renewals of notes made before said 22d day of February, 1877, and before said bank knew of said vote from the record itself. The plaintiff denied the validity of said claim.

It sufficiently appeared from the evidence in the case that the bank supposed or thought that Mills was authorized to borrow money for the use of the town and give its notes therefor
31 from the commencement of the account of the plaintiff with Mills as such treasurer.

There was no other evidence in regard to any affirmative acts of the town in its town meetings assembled which would constitute an agency in said Mills or raise an estoppel against the town other than those which are hereinbefore contained, and this comprised all the

evidence in the case in regard to estoppel, ratification, or agency, the court having confined the plaintiff in its testimony to acts of the town in town meetings and excluded any acts or knowledge of the selectmen.

The plaintiff thereupon rested its case, and the defendant then renewed its objection to the admission in evidence of the vote of October, 1868, upon the same ground as before stated; also on the ground that no sufficient evidence had been offered to prove a ratification by the town of the said vote, or to establish any estoppel against the town which would prevent it from setting up the invalidity of said vote, or in connection with said vote to prove a general authority given by the town to the said Mills to borrow money for the town and gives notes therefor sufficient to make the town liable on the notes in question; also upon the ground that the town, as a municipal corporation, had no inherent power to borrow
32 money or give notes therefor, nor had any special authority therefor been proved; that even if it had such power it could only exercise it by a vote specifying objects for borrowing money which were within the duties of the town to perform, and limiting the amount so to be borrowed, and that even if the town had such power it could not delegate to its treasurer power to borrow money unlimited either in object or in amount.

Also that by proper construction of said vote it did not authorize any person who might thereafter be treasurer to borrow any sum of money which he might think fit, and make the town liable therefor, and did not authorize said Mills to borrow the money and give said notes in question. But the court overruled said objections and held said vote to be admissible in evidence and admitted the same; to which ruling the defendant duly excepted.

The defendant also renewed its objection to the admissibility of said three notes in evidence upon the same grounds upon which it objected to the admission of said vote, and also upon the further ground that even if the town had given authority to said Mills to borrow, it had not given to him power to give negotiable promissory notes like those in suit for the money so borrowed; but
33 the court overruled said objection and admitted the notes in evidence; to which ruling the defendant duly excepted.

The defendant thereupon requested the court to instruct the jury to render a verdict for the defendant on the plaintiff's evidence, on the ground that the evidence offered by the plaintiff did not show any authority in the said Mills to borrow money for the town or to bind the town by the notes in suit, and did not show ratification or estoppel; but the court refused so to instruct the jury; to which ruling the defendant duly excepted.

The defendant thereupon offered evidence which it claimed showed that the warning of the town meeting of October, 1868, did not in fact contain any notice that the matter of authorizing the treasurer to borrow money, as shown by the vote of October 5, 1868, would come before said meeting but the plaintiff denied the validity of this claim.

The defendant also offered evidence to show that at the town

meeting of May 29, 1880, and before the vote of said meeting hereinbefore referred to was passed, the first selectman read to the meeting a list of notes signed by said Mills as treasurer, or by him and other officers of the town, and that the notes mentioned in said list were the only ones referred to in said vote, and that said list
34 did not contain any notes given to the plaintiff by said Mills as treasurer.

The defendant also offered evidence which it claimed showed that said Mills during all the time from 1869 to 1879 was largely in default to the town, having embezzled large amounts of money belonging to the town in addition to the monies obtained by him from the plaintiff as aforesaid, and that the monies so obtained by said Mills from the plaintiff were not used to pay debts of the town; or, if so used in part, were so used to pay debts of the town, for the payment of which the town had furnished sufficient monies to said Mills, which he had embezzled as aforesaid, and so were, in fact, obtained and used by him for his own purposes to cover such embezzlement; but the plaintiff denied the validity and offered evidence in contradiction of said claim.

The defendant also offered evidence to prove that some of the notes hereinbefore referred to were signed by the selectmen alone and some by said Mills and the selectmen together.

Also that before the said town meeting of October 5, 1868, there had been sundry votes passed by the town authorizing the selectmen to borrow monies for the use of the town to pay bounties to volunteers, which votes had been ratified and confirmed by the Legislature of the State of Connecticut, which votes are hereunto annexed,
35 marked Exhibit "B."

Among the statutes of the State of Connecticut in force during the period from October, 1868, to the commencement of this suit, relating to the powers and duties of towns, were the following:

"Towns shall have power to provide a hearse and pall for the burial of the dead, and to procure and hold lands for burial-grounds, and to make regulations to fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose in the same manner as other taxes are collected."

Revised Statutes of 1866, page 164, sec. 368.

"The towns shall have power to establish and maintain common schools of different grades within their limits; to purchase, receive, and hold any real and personal property for school purposes, and to convey the same; to build and repair school-houses; to lay taxes, and to make all lawful contracts, and to adopt all lawful regulations and measures for the education of the children of the town."

Revised Statutes of 1866, page 335, sec. 50.

"The several towns, respectively, or any two or more towns, by their agents appointed for that purpose, shall have power to establish asylums or poor-houses for the admission of such poor and destitute

as may be proper, not contrary to the laws of this State or of the United States, relative to the persons to be admitted into persons as may be judged proper, and to establish such by-laws such houses, and for the well-ordering and government thereof; but such by-laws may at any time be repealed by the superior court if said court shall deem them unreasonable or unjust."

Revised Statutes of 1866, page 622, sec. 27.

"The several towns have power to establish workhouses or houses of correction therein; to erect and provide suitable buildings with cells or apartments proper for the confinement of offenders sentenced thereto; to furnish materials for the work of those who are ordered to labor; to direct the kind of labor and the manner and place in which it is to be performed, either within or without the workhouse, and to make any regulations, not inconsistent with the laws of the State, which may be necessary to carry into effect the provisions of this chapter."

Revised Statutes of 1866, page 641, sec. 69.

"The several towns may lay out, inclose, and improve any lands belonging to said towns within their limits and not within the limits of any incorporated city for the purpose of a public square or common, and they may purchase any land within the same limits for that purpose."

Revised Statutes of 1866, page 103, sec. 36.

37 "When any town shall have made appropriations or incurred debts, or shall hereafter make appropriations or incur debts, exceeding ten thousand dollars, it may issue bonds, either registered or with coupons attached, or other obligations payable at such times and at such annual rate of interest, not exceeding seven per cent., payable annually or semi annually, as it shall determine, and shall designate the manner in which said bonds shall be issued and the person by whom they shall be signed and provide for keeping a record of the same."

Revised Statutes of 1875, page 87, sec. 17.

This act was passed in 1870:

"Public schools shall be established and maintained for at least thirty weeks in each year in every school district in which the number of persons between four and sixteen years of age, at the last preceding enumeration, was twenty-four or more, and at least twenty-four weeks in the other districts, but no school need be maintained in any district in which the average attendance of persons at the school in said district during the preceding year, ending the thirty-first day of August, was less than eight. Said schools shall be taught by teachers found duly qualified by the school visitors, and shall be open to all children over four years of age residing in the respective districts, and no person shall be denied admittance to any
38 instruction in said school on account of race or color."

Revised Statutes of 1875, page 128, sec. 1.

"That the several towns in this State shall make, build, and keep in good and sufficient repair all the necessary highways and bridges within the limits of such towns, except where it belongs to some particular person or corporation to maintain such highways or bridges."

Revised Statutes of Conn., 1866, page 492, sec. 1.

"Any town, at a lawful meeting, may locate highway districts of convenient extent, appoint surveyors of highways and collectors of highway taxes, and lay out the money and repair the highways, in such manner as it may judge proper, and make all necessary regulations for that purpose, inflict fines, not exceeding seven dollars, on persons who, having been appointed surveyors of highways or collectors of highway taxes, shall refuse to serve, or who, having accepted their appointment, shall neglect to perform their duty; may prescribe the mode of recovering such fines; direct the time and manner in which collectors of highway taxes shall render their accounts, and may proceed against them for any default, as in
39 the case of negligent collectors of town taxes, but any town authorized by special act of the General Assembly to make or repair the highways in such towns may continue to make and repair their highways agreeably to such special act."

Revised Statutes of Conn., 1866, page 494, sec. 12.

40 Upon the closing of the testimony the defendant requested the court to charge the jury as follows:

1. If the jury find that the warning for the town meeting of October, 1868, did not contain any notice that the question of borrowing money by the treasurer would come up, then the vote put in evidence is void, and gave no authority to the treasurer to borrow money.

The court refused to charge as requested, otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

2. If said vote was void for the above reason it could only be ratified by a town meeting called for that purpose.

The court refused to charge as requested, otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

41 3. Ratification is a question of intention, and to be valid must be made with a full knowledge of all the circumstances connected with the matter to be ratified, and, especially with a full knowledge of the result of the ratification, and an intention that such a result should be brought about.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

4. If the result of a ratification of the vote of October 5th, 1868, by any town meetings would be to validate the notes held by the Charter Oak Bank, then to find such a ratification the jury must find by evidence in the case, as a fact, that such town meeting knew all the material facts connected with these notes, and intended to make the town liable to pay the same.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

5. If the notes in suit were not in fact given for money
42 borrowed for the use of the town, the town would have no power to ratify the vote so as to validate these notes.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

6. The vote of October 5, 1868, is void, unless the jury find as a fact that the town at some town meeting, with a full knowledge of all the notes made by Mills, the circumstances under which they were made, and the disposition of the money for which they were given, and with the actual intention of confirming and validating all said notes, did such acts in such meeting as did in fact and were intended to ratify and confirm such vote.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

That there was not sufficient evidence of an estoppel against the town to go [to] the jury upon.

43 The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

That if the jury find that when Mill. borrowed money from the bank and gave the original notes therefor he was in default to the town and borrowed the money to meet such defaults, then the money was not borrowed for the use of the town, although part or all of it may in fact have been used by Mills to pay the debts of the town.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

If the jury find that the notes in suit were renewals of original

notes given when the money was actually advanced by the bank, then these renewals are to be considered the same as if they were made when the money was so advanced.

44 The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The defendant also requested the court to charge the jury as follows:

The vote of October 5th, 1868, is void on its face: First, because the town had no power to borrow money; second, if it had power to borrow at all it could not vote to borrow an unlimited sum; third, if it could do so it could not delegate such unlimited power to an individual.

The court refused to charge as requested otherwise than as it did charge, as hereinafter set forth; to which refusal the defendant then and there duly excepted.

The court charged as follows upon the preceding questions:

This suit is brought against the Town of Bloomfield upon three promissory notes, each signed by Samuel J. Mills, treasurer of the town of Bloomfield, and payable to his own order, and by him endorsed—one note, dated June 20th, 1879, for $5,500; the second, dated June 21st, 1879, for $4,433.30; the third, dated July 1st, 1879, for $9,500, and each payable three months after its date.

45 The signature of Mills upon the notes, the fact that from October 5, 1868, to July 16, 1879, he was treasurer of the town of Bloomfield, and the ownership of the notes by the plaintiff are all substantially admitted by the defendant.

It is also claimed by the plaintiff that the notes were discounted for the benefit of the town, and the plaintiff admits that under the circumstances of the case the bank stands in the same relations to the town as it would have stood had it been the payee instead of being the indorsee upon the notes.

In this state of facts the defendant denies that Mills as treasurer had any authority to execute any notes, or that, if he had, his authority was a limited one, and insists that having no authority to act as the general agent of the town in the borrowing of money, and therefore to bind it by his representations, he issued these notes for his own benefit and not for the benefit of the town, and consequently the town is not liable.

The first question to be settled is what was the authority of Mills in regard to borrowing money and giving the notes of the town to the lenders for it.

46 If he possessed, at the time he executed these notes, a general power and authority to borrow money for the use of the town without any other specified limitation in respect to time, amount, or purpose for which the money was to be used, then these notes would be binding upon the town, although they were given for his own purposes, provided the bank in advancing the money originally upon the originals of these notes, and discounting the notes in suit acted in good faith and without notice of Mills' fraud.

Therefore the question of Mills' authority and its extent may become a very important one.

The plaintiff relies first upon the vote of the town passed October 5, 1868, which is in these words: Voted that hereafter the town treasurer be authorized and empowered to borrow money for the use of the town.

It is admitted that the warning for the meeting was not recorded and is not on file, and the plaintiff does not offer any affirmative evidence that the subject of authorizing anybody to borrow money was specified in the warning.

The defendant has offered the affirmative testimony of Mr. John W. Spencer, aided to some extent by that of Mr. Burnham,
47 that the warning was silent on this subject. If you think that their affirmative testimoney satisfies you that the warning did not specify this subject either expressly or by implication, then the vote standing alone or by itself is insufficient to confer upon the treasurer a general authority to borrow money, and consequently the power of binding the town by his untrue representations in regard to the purpose for which the money was to be used.

Furthermore, if the testimony of these two gentlemen is insufficient to establish affirmatively that there was nothing upon the subject of authority to borrow money in the warning, then the question stands just as it did when the plaintiff left it, viz., an absence of all proof on the subject, and there is no presumption in the case in the absence of all testimony that the warning specified the subject of giving authority to borrow money. This vote standing alone did not give general authority to borrow money and act as a general agent in that regard.

The plaintiff next endeavors to show that, by the continuous and affirmative action and conduct of the town in its town meet-
48 ings after this vote in respect to the known acts of the treasurer under this vote, in borrowing money and giving notes, which acts were reported annually to the town, the treasurer's general agency under this vote became, in fact, established, and he was, in fact, their general agent for this purpose.

I charge you upon this point that subsequent to such an invalid vote as is in evidence in this case a town can, by its continuous and affirmative action and conduct at its town meetings in regard to the known acts of the specific agent, borrowing money generally and giving notes under said vote which are annually reported to the town, establish and make him, in fact, their general agent for the purpose.

It is for you to find as a question of fact whether the town did, by its continuous and affirmative acts and conduct in regard to the known action of the treasurer in borrowing money, make him, in fact, their agent to do the same things which the vote purported to authorize him to do.

You are to find whether or not the town at its town meetings, by its acts and conduct, did practically—*i. e.*, as a matter of fact—
49 authorize the treasurer to go on and do what the vote purported to authorize him to do.

This is limited to the acts of the town in its town meetings, and it calls for some affirmative acts, and not simply what the town did not do. In order for you to find that the treasurer was practically invested with the powers which the vote gave him, there should be more than a single act of the town; there should, in my opinion, be a series of acts (unless, indeed, there should have been a legal vote ratifying the old vote), which should be of so positive a character as to satisfy the mind that the town did, knowing that the treasurer was borrowing money generally and freely, declare that he continued to be and was clothed with this authority.

The plaintiff relies upon the acts of the town at its annual town meetings, continuously from 1869 to 1878, when the reports of the treasurer showing that he was borrowing money each year to a continually increasing amount, and the reports of the selectmen giving in some instances the names of the lenders, were read and were accepted by the town.

The plaintiff says that when the town in nine successive town meetings knew that the same treasurer was borrowing money and increasing the town debt, by notes, about $26,000, and accepted his reports, and did not attempt to stay his hands, that this is an establishment of his agency and a declaration and holding himself to the public as their agent to borrow money.

The defendant says, on the other hand, that these acts simply consist in hearing or reading the reports of the selectmen and treasurer, and in accepting them as correct reports of what had been done the past year; that their vote of acceptance means: you have made your report for the previous fiscal year. It is a correct report, and we are satisfied that it is a correct report, and means no more. And, further, that if any agency in fact can be inferred from these acts it was merely an acquiescence in the power of the treasurer to borrow money which actually went into the treasury, and not in any universal power to bind the town by his fraud.

The plaintiff further relies upon the vote of the town at a meeting held May 20th, 1880, whereby certain notes which had been given by said Mills in July, 1879, were validated. This vote was passed the year after Mills resigned and was not a declaration of his existing agency or of his existing powers. He was not held out to the world by this vote as their existing agent, *and* being limited to certain notes, a list of which was read to the meeting and which were renewed by the selectmen —can only be considered as a ratification of those notes and not as a general ratification of what was omitted to be ratified, either by the town or by the selectmen who were appointed by the vote, the agents of the town.

This vote may be important in another point of view, to which I shall hereafter call your attention.

So that you come back upon this question of fact to ascertain whether the town at its town meetings during the continuance of Mills' treasurership made him, by its affirmative acts and conduct, their agent in fact to do what the vote purported to authorize him to do; and the determination of this question may be a very import-

ant one in this case on account of the legal rules relating to agency. Thus if an agent is authorized to give the notes of his principal to obtain money for a designated purpose and a third person lends money to such agent, and takes from him the promise of his principal, the latter would be liable on the promise, although the money was procured by the agent with a secret intention to misapply it or to appropriate it to an object different from that for which he was authorized to procure it, because the agent is pursuing the power as exhibited to the public, and a principal is responsible for the unauthorized frauds of his general agent or his agent apparently clothed with a general authority when the acts are committed during the existence of the agency and while the agent is employed in doing the business committed to his hands. But if the agent is authorized in writing to purchase and incur debts to a limited specified amount, which authority is shown by the seller if he purchases in excess of that amount, the principal is not liable, although the agent represented that he had not exceeded his authority, because it was the business of the seller to ascertain from other sources than the agent that the limited authority had not been exceeded.

If, therefore, you find that Mills was made by the affirmative acts and by the conduct of the town its agent to do what the vote said he was authorized to do, and thus held him out to the public and clothed him with the power to borrow money for the town's use, his acts in borrowing money during the existence of the agency, and while he was employed in doing the business entrusted to him, are binding upon the town, although he intended to misappropriate the money thus borrowed, unless the bank had knowledge of or was privy to such misappropriation.

The plaintiff presents these same facts in regard to the acts of the town in another point of view.

The rule of law is that if a person, by his acts or conduct, intentionally or wilfully causes a third person to believe in the existence of a certain state of things and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things as existing at the same time. Thus if A stands by and silently sees his horse sold by B to C without disclosing the ownership, A would be prevented from a recovery of the horse on the ground that he was the owner.

So here, if the town, by its conduct in town meetings between 1860 and 1870, intentionally caused the bank to believe that Mills was their agent, clothed with full power to borrow money on their credit, and induced the bank to act on that belief, so as to alter its position and lend money in the belief that Mills was the agent of the town, then the town is estopped to deny that Mills was their agent. Now, all estoppels presuppose an error or mistake on the part that is in this case in error on the part of the bank, induced by the fraud or fault of the other party. If there was culpable silence or misrepresentations on the part of the town, not of the town clerk or other officer, but of the town, in regard to

Mills' powers, or an intentional holding him forth to the public as the general agent of the town when he was not their agent, whereby the bank was deceived and lured to its hurt, then the town is estopped to say that there was no agency.

The same evidence which is offered on this point is also offered on the point that Mills was made in fact the agent.

The claim of the plaintiff is that this evidence shows in the first place that Mills was in fact the agent; and, second, if he was not the agent, that the town had so faultily acted in the matter in holding him out to the public as their agent that it is estopped to deny its agency.

I shall not stop to consider at length this question of estoppel, because it seems to me that the real object and purpose of the
55 evidence is to tend to prove that Mills was the agent, rather than any faulty conduct of the town if he was not the agent.

But undoubtedly there are cases, and it is for you to say whether this is one, where a town never undertook to make or never succeeded in making an agent by any vote and had no legally appointed agent, and yet by its public acts in town meetings so faultily held out a person as their agent and declared him to be such as to delude third persons into the belief that he was its agent and to act upon that belief to their hurt, and so the town becomes estopped—that is, prevented from setting up the non-agency.

If you find that Mills was empowered by the town to borrow money generally, or that by their culpable misrepresentations they are estopped to deny the agency his acts in borrowing money from the plaintiff bank, representing that it was for the town, although he intended it for his own use, or, in other words, although his object was to pay his own debt to the town and hide his defalcation, are binding upon the town, unless the bank had knowledge that the money was for Mills personally.

56 And here it becomes important to ascertain whether this money was borrowed in part for the use of the town.

The defendant says that Mills was a defaulter, and that he has virtually admitted it upon the stand, and, next, that it is manifest that this money, none of it except $2,300, which went into the $1,433.30 note, ever was credited upon his treasurer's book; that these three notes, amounting, after deducting the $2,300, to $16,637.30, he got upon notes which he did not put upon his book; that, his defalcations being admitted by him, it is apparent that he drew these notes and obtained their discount for the purpose in part of raising money with which to pay debts of the town, which he ought to have paid with the money which he had purloined; that it is absurd to suppose that these $16,637.30 were town money when Mills omitted to credit the avails upon his books, and that the books themselves show a small defalcation; that when he says that these notes were for the use of the town he is unworthy of credit, in view of the facts which he stated upon cross-examination.

The plaintiff on the other hand says it is not proved that there was a defalcation.

57 (The judge here referred to the evidence in detail.)

That the supposed defalcation arose from not crediting to the town on the books the money which he had really borrowed for the town, like the Jeffrey O. Phelps note.

If the notes were actually for the town and not to pay Mills' debts to the town, then the town is liable.

If the notes were for Mills' own benefit—*i. e.*, if they were given by him to pay his own debts to the town—then, upon the supposition that you have found his authority, *then* the town is liable, unless the bank had knowledge that they were for Mills' own use.

Here the defendant, taking the burden of proof, says that the circumstances of this long series of discounted, protested, and renewed notes were very peculiar, and so peculiar that the bank must have known that it was doing business only nominally with the town; that forty-eight different notes were discounted, which went to make up the three notes in suit, and twenty-nine went to protest; that these discounts began in 1873 with notes of moderate amount, and were never paid, but continually increased; that large inter-
58 est was paid in advance, which amounted, upon all the notes, to $5,293.87; that the whole business was that of a person or corporation in a chronic state of insolvency, who or which never paid a note and lived solely by borrowing; that the bank officer could not have supposed that a town was, unless by the fraud of its officers, compelled to run a continuous series of notes, with increasing amounts, through a bank, from 1873 to 1879; that the repeated protesting of the notes, the dovetailing of notes together, and the continuous non-payment of the notes should have given the knowledge that the agent was using the credit of the town for himself.

On the other hand, the plaintiff says that the idea that it discounted these notes suspecting even that they, or any of them, was for Mills personally, is an absurdity; that he told the president from time to time for what he wanted the money; that he represented it was for the town to pay taxes or coupons, and that they let the notes run along, knowing that the town was perfectly responsible, and if it wanted to borrow they were willing to lend, and that the repeated renewals and repeated protests merely showed them that the
59 town and selectmen were not managing very judiciously, but not that the treasurer, who was as much trusted by the bank as the town, was a defaulter. Furthermore, the apparent uses were the town's uses; the checks were generally for payment of State taxes or coupons, or other town purposes.

If then the bank discounted these notes without knowledge that they were for Mills' benefit the town is liable.

The counsel for the defendant excepted to said charge as follows:

1st. To so much thereof as implies that the town could by its acts in town meeting give authority to borrow money, when there was no legal vote to that effect.

2d. To the omission to state that the acts of the town must be with full knowledge of all the acts of Mills in relation to the matter in question.

3d. To the omission to state that the town by its acts had made

Mills its general agent. He could not bind the town by untrue representations.

60 4th. In relation to estoppel, to the omission of the court to charge that to create on estoppel the jury must find that the bank when they advanced the money to Mills knew of these acts of the town and relied upon them.

The jury returned a verdict for the plaintiff under the foregoing instructions of the court, and inasmuch as the said several matters do not appear by the record the defendants' counsel requested his honor, the judge of said court, to allow and sign this bill of exceptions, and his honor did, in pursuance of such request and of the statutes in such case provided, so allow and sign this bill of exceptions containing the several matters aforesaid at and during the term of the court aforesaid, to wit, at the September term of said court, A. D. 1882.

N. SHIPMAN, [L. S.]
*District Judge.*

61 EXHIBIT "A."

*Annual Report of the Selectmen of the* the *Town of Bloomfield for the Year Ending Oct. 1st, 1869.*

Repairs of highways and bridges.

| | |
|---|---|
| Rodney Kellogg | $20 00 |
| S. G. Smith | 9 84 |
| Robert Forsyth | 1,470 00 |
| Ariel Michelson | 154 08 |
| George B. Phelps | 60 00 |
| And 46 other persons by name, with the amounts paid to each, aggregating | 948 50 |
| | $2,662 42 |

Sheep expenses.

| | |
|---|---|
| Six other persons by name, with amount paid to each, aggregating | 122 00 |

General expenses.

| | |
|---|---|
| Charles Parsons | 8 50 |
| Elisha Moore and J. B. Newberry | 24 00 |
| A. M. Shew, hospital | 64 65 |
| Henry Gray | 36 00 |
| George Gorton and others | 30 50 |
| And 27 other items, aggregating | 1,523 83 |
| | $1,687 48 |

62 Interest on town notes.

| | |
|---|---|
| Mrs. A. R. Tracy | 120 00 |
| William G. Case | 6 00 |
| Curtis H. Case | 33 00 |
| Wm. R. Adams | 24 00 |

| | |
|---|---|
| F. C. & G. Barber | 306 00 |
| Debby Wilcox | 105 00 |
| Ann Wilcox | 24 00 |
| J. and H. Case | 15 00 |
| C. H. Case | 15 00 |
| Alden Cadwell | 120 00 |
| E. H. Case | 36 00 |
| E. P. Thompson | 19 00 |
| A. H. Jerome | 60 00 |
| A. R. Tracy | 120 00 |
| Sally Gillett | 300 00 |
| Brinton P. Allen | 90 00 |
| E. P. Thompson | 114 00 |
| | 1,507 00 |

Paupers.

| | |
|---|---|
| Three items, aggregating | 506 44 |

Town notes taken up.

| | |
|---|---|
| William G. Case | 102 83 |
| Brinton P. Allen | 1,543 75 |
| | 1,646 58 |

63 Amount due the treasury.

| | |
|---|---|
| Amount due the town (6 items) | 8,754 06 |
| Whole amount of orders granted | 8,131 92 |
| Amount of orders unpaid | 218 31 |
| Surplus in treasury after all orders are paid | 633 68 |
| Indebtedness of town by notes | 27,100 00 |
| Amount due the town | 8,754 06 |
| Total indebtedness of town | 18,345 94 |

HENRY HASKINS,
J. CLEVELAND CAPEN,
THOMAS E. MOORE,
*Selectmen.*

Bloomfield, October 4th, 1869.

*Treasurer's Report.*

S. J. Mills, treasurer, to Town of Bloomfield, Dr.

| 1869. | | | |
|---|---|---|---|
| To balance of account | | | 3,146 72 |
| " interest on town deposit fund | | | 258 13 |
| " school fund | | | 352 00 |
| " A. A. Mills, collector on list of | | 1865 | 500 00 |
| " H. W. Rowley | " | 1866 | 400 00 |
| " H. W. Rowley | " | 1867 | 1,400 00 |
| " S. B. Pinney | " | 1868 | 5,051 73 |

| | |
|---|---|
| To dog fund, received 1868 | 73 00 |
| " amount received on town notes | 6,559 88 |
| | $17,741 46 |

64

1869. Cr.

| | |
|---|---|
| By bills payable | 2,694 92 |
| " State and commutation tax | 2,365 89 |
| " 5 per cent. installment Conn. Western R. R. | 2,113 00 |
| " school visitors' orders | 1,429 20 |
| " selectmen's orders | 8,279 50 |
| " justice's order | 4 86 |
| " balance in treasury | 852 09 |
| | $17,741 46 |

S. J. MILLS,
*Treasurer.*

Bloomfield, Oct. 4, 1869.

65 *Annual Report of the Selectmen of the Town of Bloomfield, for the Year Ending Oct. 3rd*, 1870.

Repairs on highways and bridges.

57 persons, by name, with amounts paid to each, aggregating $1,775 57

General expenses.

39 persons, by name, with amounts paid to each, aggregating $2,098 51

Interest on town notes.

16 persons, by name, with amounts paid to each, aggregating $1,628 87

Sheep expenses.

2 persons, by name, with amounts paid to each, aggregating $8 00

Paupers.

2 persons, by name, with amounts paid to each, aggregating $556 25

To take up town notes.

4 persons, by name, with amounts paid to each, aggregating $2,998 50

66

| | |
|---|---|
| Amount due the treasury—6 items, aggregating | 7,083 66 |
| Amount due the town | 7,083 66 |
| Whole amount of orders granted | 9,065 70 |
| Amount of orders unpaid | 756 51 |
| Surplus in treasury after all orders are paid | 2,867 31 |

| | |
|---|---|
| Indebtedness of town by notes | $26,300 00 |
| Amount due railroad fund | 7,000 06 |
| | $33,300 00 |
| Amount due the town, with surplus | 9,950 96 |
| Total indebtedness of town | 23,349 04 |

HENRY C. HOSKINS,
THOMAS E. MOORE,
MARTIN BURR,
*Selectmen.*

*Treasurer's Report.*

S. J. Mills, treasurer, to Town of Bloomfield, Dr.

| | | |
|---|---|---|
| 1870. | To balance of account | 852 09 |
| | " Interest on town deposit fund | 246 67 |
| | " School fund | 349 00 |
| | " Dog fund, received 1869 | 86 00 |
| | " A. A. Mills, coll. on list, 1865 | 1,468 24 |
| | " W. W. Rowley, " 1867 | 566 89 |
| | " S. B. Pinney " 1868 | 2,003 29 |
| 67 | " Thos. E. Moore " 1869 | 6,000 00 |
| | " J. W. Spencer, coll. back taxes | 500 00 |
| | " C. T. Hillyer | 7,000 00 |
| | " Amount received on town notes | 3,528 62 |
| | " H. C. Hoskins, town funds | 3,193 30 |
| | | $25,564 10 |

Bloofield, Oct. 3, 1870.

S. J. MILLS, *Treasurer.*

68 *Third Annual Report of the Selectmen of the Town of Bloomfield for the year ending Oct. 1st, 1871.*

Highways and bridges.

| | |
|---|---|
| 32 persons, by name, with amounts paid to each, aggregating | $1,681 97 |

Paupers.

| | |
|---|---|
| 4 persons, by name, with amounts paid to each, aggregating | $590 70 |

Commissions.

| | |
|---|---|
| Thos. E. Moore | $186 35 |

Sheep losses.

| | |
|---|---|
| John Wilcox | 6 00 |
| Abatements | $176 39 |

General expenses.

| | |
|---|---|
| 31 persons, by name, with amounts paid to each, aggregating | $1,277 69 |

Interest on town notes.

| | |
|---|---|
| 17 persons, by name, with amount paid to each, aggregating | $1,747 00 |

69 Registrar of elections.

| | |
|---|---|
| 2 persons, by name, with amount paid to each, aggregating | $36 00 |

*Treasurer's Report.*

S. J. Mills to Town of Bloomfield. Dr.

| | |
|---|---|
| To balance of account | $3,802 82 |
| " interest on town deposit fund | 266 30 |
| " school fund | 321 30 |
| " dog fund from town clerk | 97 00 |
| " George Newberry, Esq., fines | 22 00 |
| " old hearse | 21 00 |
| " J. W. Spencer, collector of back taxes | 5 00 |
| " Thos. E. Moore, collector, list of 1869 | 3,039 77 |
| " " " percentage, " | 218 73 |
| " " " collection on list of 1870 | 6,191 68 |
| " amount received on town notes | 11,592 78 |
| | $25,753 06 |

Cr.

| | |
|---|---|
| By amount paid Charter Oak Bank | 10,904 48 |
| " State and commutation tax | 1,882 78 |
| " county tax | 210 77 |
| " selectmen's orders | 5,469 36 |
| " selectmen's school orders | 1,637 43 |
| " coupon town bonds | 2363 00 |
| " balance in treasury | 4,245 24 |
| | 25,753 06 |

S. J. MILLS,
*Treasurer.*

Boomfield, Oct. 2d, 1871.

70 *Amount Due the Treasury.*

| | |
|---|---|
| Amount due the town (6 items) | $7,163 49 |
| Amount of town orders granted | 5,586 80 |

| | |
|---|---|
| Amount of orders unpaid | 579 51 |
| Amount of school orders granted | 1,995 93 |
| Amount of " unpaid | 278 50 |
| Surplus in treasury after all orders are paid | 2,987 23 |
| Indebtedness of town by notes | 23,800 00 |
| Amount due town with surplus in treasury | 10,150 42 |
| Total indebtedness of town | 23,650 00 |

HENRY C. HOSKINS,
THOMAS E. MOORE,
MARTIN BURR,
*Selectmen.*

71 *Annual Report of the Selectmen of the Town of Bloomfield for the Year Ending Oct. 1, 1872.*

Highways and bridges.

| | |
|---|---|
| 29 persons, by name, with the amount paid to each, aggregating | |
| General expenses. | $1,138 79 |
| 26 persons, by name, with the amount paid to each, aggregating | |

Sheep losses.

| | |
|---|---|
| 3 persons, by name, with the amount paid to each, aggregating | $27 00 |

Interest on town notes.

| | |
|---|---|
| 13 persons, by name, with the amount paid to each, aggregating | $1,871 00 |

Paupers.

| | |
|---|---|
| 4 persons, by name, with the amount paid to each, aggregating | $781 75 |

Collector's commission.

| | |
|---|---|
| 3 persons, by name, with the amount paid to each, aggregating | $341 03 |

72 Abatements.

| | |
|---|---|
| 5 persons, by name, with the amount paid to each, aggregating | $1,226 14 |
| School orders | $2,212 21 |
| Amount of town orders granted | 5,840 40 |
| Amount unpaid | 1,484 26 |
| **Indebtedness of town by notes** | **$32,800 00** |

Amount due treasury.

| | | |
|---|---|---|
| 5 items aggregating | $5,259 68 | |
| Balance in treasury | 5,388 96 | |
| | 10,648 64 | |
| Amount orders unpaid | 1,484 26 | |
| | | 9,164 38 |
| Total indebtedness of town | | $23,635 62 |

HENRY C. HOSKINS,
THOMAS E. MOORE,
MARTIN BURR,
*Selectmen.*

*Treasurer's Report.*

S. J. Mills to Town of Bloomfield.

| | Dr. |
|---|---|
| By balance of accounts | $4,245 24 |
| By town deposit fund | 552 06 |
| By school fund and State appropriation | 496 50 |
| By dog fund from town clerk | 89 00 |
| By George Newbery, Esq., fines | 7 00 |
| 73 By J. W. Spencer, collector back taxes | 1,030 29 |
| By S. B. Pinney, balance of list, 1868 | 579 83 |
| By T. E. Moore, balance of list, 1870 | 3,801 01 |
| By Wm. J. Gabb, coll. list of 1871 | 8,550 00 |
| By amount received on town notes | 5,646 44 |
| | $24,997 37 |

S. J. MILLS, *Treasurer.*

Bloomfield, Oct. 4th, 1872.

*Annual Report of the Selectmen of the Town of Bloomfield for the Year Ending October 6th, 1873.*

Highways and bridges.

| | |
|---|---|
| 25 persons, by name, with the amount paid to each, aggregating | |
| General expenses. | $2,816 74 |
| 19 items, by name, with the amount paid to each, aggregating | |

Sheep killings.

| | |
|---|---|
| Eli Brown | 105 50 |

Paupers.

| | |
|---|---|
| 4 persons, by name, with the amount paid to each, aggregating | 546 00 |

74

Interest on town notes.

| | |
|---|---|
| 12 persons, by name, with the amount paid to each, aggregating | $2,060 66 |

Collector's commissions.

| | |
|---|---|
| 2 persons, by name, with the amount paid to each, aggregating | $208 44 |

Abatements.

| | |
|---|---|
| Wm. J. Gabb | $102 56 |
| School orders | $2,391 47 |
| Town orders granted | 5,839 80 |

Treasurer's report.

S. J. Mills to Town of Bloomfield, Dr.

| | |
|---|---|
| By balance of account | $5,388 96 |
| " town deposit fund | 210 13 |
| " school fund & State appropriation | 822 50 |
| " George Newberry, Esq., fines | 17 00 |
| " A. A. Mills, balance of lists, 1864–1865 | 481 32 |
| " Wm. J. Gabb, list, 1871, percentage | 171 42 |
| " Wm. J. Gabb, balance list, 1871 | 3,249 11 |
| " Thomas E. Moore, coll. list, 1872 | 8,076 52 |
| " license | 100 00 |
| " amount received, town notes | 4,219 32 |
| | $22,736 28 |

75

Cr.

| | |
|---|---|
| To amount paid on town notes | $4,087 39 |
| " State and commutation tax | 2,034 32 |
| " county tax | 422 33 |
| " coupon town bonds | 2,538 00 |
| " Norris Holcomb, town deposit fund | 225 69 |
| " justice orders | 31 83 |
| " military abatements | 64 00 |
| " selectmen's school orders | 2,391 47 |
| " selectmen's general orders | 6,854 44 |
| " balance in treasury | 4,086 81 |
| | $22,736 28 |

S. J. MILLS, *Treasurer.*

Bloomfield, Oct. 4th, 1873.

| | | |
|---|---|---|
| Indebtedness of town by notes | | $34,740 00 |
| J. W. Spencer, special coll. | $1,069 58 | |
| Thomas E. Moore, bill, 1872 | 3,388 61 | |
| | $4,458 19 | |
| Balance in treasury | 4,086 81 | |
| | $8,545 00 | |
| Amount of orders unpaid | 705 00 | |
| | | 7,840 00 |
| Total indebtedness of town | | 26,900 00 |

J. CLEVELAND CAPEN,
NORRIS HOLCOMB,
GAYLORD MEACHAM,
*Selectmen.*

76 *Report of the Selectmen of the Town of Bloomfield for the Year Ending Oct. 5th*, 1874.

Roads and bridges.

| | |
|---|---|
| 15 persons, by name, with the amount paid to each, aggregating | $1,888 57 |

General expenses.

| | |
|---|---|
| 25 persons, by name, with the amount paid to each, aggregating | $810 06 |

Paupers.

| | |
|---|---|
| 4 persons, by name, with the amount paid to each, aggregating | $797 60 |

Interest on town notes.

| | |
|---|---|
| 17 persons, by name, with the amount paid to each, aggregating | $3,028 41 |

Collector's commission.

| | |
|---|---|
| 2 items, by name, with the amount paid in each, aggregating | $166 19 |

Schools.

| | |
|---|---|
| 2 items, aggregating | $2,403 30 |

77 *Treasurer's Report.*

| S. J. Mills to Town of Bloomfield, | Dr. |
|---|---|
| To balance of account | $4,086 81 |
| " town deposit fund | 207 49 |
| " school fund & State appropriation | 777 50 |

| | |
|---|---|
| To Thos. E. Moore, coll. list 1872 | 1,490 00 |
| " " " " " " 1873 | 8,989 88 |
| " county commissioners | 100 00 |
| " H. D. Nearing, selectman | 108 75 |
| " am't received, town notes | 3,319 44 |
| | $19,070 87 |

Cr.

| | |
|---|---|
| By am't paid on town notes | $3,098 00 |
| " State and commutation tax | 1,058 67 |
| " balance county tax | 422 34 |
| " coupons town bonds | 2,538 00 |
| " military abatements | 20 00 |
| " error S. B. Pinney, coll. list 1868 | 219 18 |
| " selectmen's school orders | 2,349 30 |
| " " general orders | 6,288 51 |
| " balance in treasury | 3,076 87 |
| | $19,070 87 |

Bloomfield, Oct. 2d, 1874.

S. J. MILLS, *Treasurer.*

| | | | |
|---|---|---|---|
| 78 | Indebted of town by notes | | $35,943 74 |
| | J. W. Spencer, special collector | $1,069 50. | |
| S. B. Pinney, collector in 1868 | | 219 18 | |
| Thomas E. Moore, " 1873 | | 1,898 61 | |
| " " " " 1873 | | 4,419 93 | |
| | | 7,607 30 | |
| Balance in treasury | | 3,076 87 | |
| | | 10,684 17 | |
| Amount of orders unpaid | | 1,179 33 | |
| | | | 9,504 84 |
| Total indebtedness of the town | | | $26,438 90 |

CURTIS H. CASE
HEMAN D. NEARING,
*Selectmen.*

*Report of the Selectmen of the Town of Bloomfield for the Year Ending October 4, 1875.*

Roads and bridges

| | |
|---|---|
| 18 persons, by name, with the amount paid to each, aggregating | $1,987 42 |

Paupers.

| | |
|---|---|
| 6 persons, by name, with the amount paid to each, aggregating | $653 57 |

79 Sheep killed by dogs.

| | | |
|---|---|---|
| 3 persons, by name, with the amount paid to each, aggregating | | $92 00 |

Board of relief and assessor's list of 1874.

| | | |
|---|---|---|
| 3 items, aggregating | | $79 00 |
| Two assessor's bills not in | | |

General expenses.

| | | |
|---|---|---|
| 20 persons, by name, with the amounts paid to each, aggregating | | $441 95 |

Appropriation of money from town treasury for schools.

| | | |
|---|---|---|
| 12 persons, by name, with the amounts paid to each, aggregating | | 2,491 48 |

Interest paid on town notes.

| | | |
|---|---|---|
| 15 persons, by name, with the amount paid to each, aggregating | | 2,694 38 |

Indebtedness of the town of Bloomfield.

| | | |
|---|---|---|
| By notes, Oct. 4th, 1875 | | 38,325 74 |
| Due from J. W. Spencer, special collector, on old-rate bills | $519 58 | |
| Due from T. E. Moore, collector, on list of 1872 | 1,117 61 | |
| 80 Due from T. E. Moore, collector, on list of 1873 | 2,122 93 | |
| Due from T. E. Moore, collector, on list of 1874 | 5,742 40 | |
| | 9,502 52 | |
| Balance in treasury Oct. 4th | 2,577 12 | |
| | 12,079 64 | |
| Amount of orders unpaid | 1,952 71 | |
| | | 10,126 93 |
| Indebtedness of the town (excepting town bonds) | | 28,198 81 |

CURTIS H. CASE,
HEMAN D. NEARING,
EDGAR W. PINNEY,
*Selectmen.*

*Treasurer's Report.*

S. J. Mills to Town of Bloomfield, DR.

| | |
|---|---|
| To balance of account | $3,076 87 |
| To town deposit fund | 223 32 |

| | |
|---|---|
| To school fund | 347 60 |
| To civil list funds | 474 00 |
| To county commissioners | 101 90 |
| To C. H. Case, selectmen, S. B. Pinney's note, balance 1868 list | 214 24 |
| To J. W. Spencer, special collector | 550 00 |
| To Thomas E. Moore, collector, list 1872 | 781 00 |
| To " " " " 1873 | 2,297 00 |
| To " " " " 1874 | 3,382 60 |
| Amount received on town notes | 3,798 27 |
| | $15,279 80 |

81

Cr.

| | |
|---|---|
| By amount paid on town notes | $1,500 00 |
| By State and commutation tax | 1,040 95 |
| By coupons, town bonds | 2,538 00 |
| By selectmen, school orders | 2,437 48 |
| By " general orders | 5,169 54 |
| By justice's order, J. E. Palmer, Esq. | 12 71 |
| By military abatement | 4 00 |
| By balance in treasury | 2,577 12 |
| | $15,279 80 |

S. J. MILLS,
*Treasurer.*

Bloomfield, Sept. 29th, 1875.

*Report of the Selectmen of the Town of Bloomfield for the Year Ending October 2, 1876.*

For schools.

| | |
|---|---|
| 12 persons, by name, with the amount paid to each, aggregating | $2,510 82 |

Paupers.

| | |
|---|---|
| 6 persons, by name, with the amount paid to each, aggregating | 606 00 |

82

Assessors and board of relief.

| | |
|---|---|
| 5 persons, by name, with the amount paid to each, aggregating | $100 79 |

Interest paid on town notes.

| | |
|---|---|
| 14 persons, by name, with the amount paid to each, aggregating | $2,383 07 |

Roads and bridges.

| | |
|---|---|
| 8 persons, by name, with the amount paid to each, aggregating | 2,501 60 |

General expenses.

| | |
|---|---|
| 29 persons, by name, with the amount paid to each, aggregating | 559 48 |
| Whole amount | $8,661 78 |
| Whole amount of orders drawn on treasurer for year ending October 2, 1876, by selectmen | $8,661 76 |

Indebtedness of the town.

| | | |
|---|---|---|
| October 2, 1876, by notes | | $39,707 17 |

Due on rate bills.

| | | |
|---|---|---|
| From J. W. Spencer, special collector | $519 58 | |
| " J. E. Moore, collector, on list of 1872 | 1,117 61 | |
| " " " on list of 1873 | 2,122 93 | |
| " " " on list of 1874 | 2,683 34 | |
| " " " on list of 1875 | 5,827 88 | |
| | $12,271 34 | |
| Balance in treasury October 2 | 2,993 52 | |
| | $15,264 86 | |
| Outstanding town orders | 1,394 50 | |
| | | 13,870 36 |
| Indebtedness of town (excepting town bonds) | | $25,836 81 |

CURTIS H. CASE,
HEMAN D. NEARING,
HENRY C. HOSKINS,
*Selectmen.*

| | |
|---|---|
| During the year ending October 2, 1876, there has been paid, extra expense, county tax | $640 62 |
| Extra on large bridge, about | 400 00 |
| | $1,040 62 |

*Treasurer's Report.*

| S. J. Mills to Town of Bloomfield, | Dr. |
|---|---|
| To balance of account | $2,577 12 |
| To town deposit fund (interest) | 330 64 |
| " " " (principal) | 500 00 |
| To school fund | 309 00 |
| To civil list funds | 463 50 |
| To county commissioners | 100 00 |
| To S. B. Pinney on town note | 250 00 |
| To Thomas E. Moore, collector, list 1874 | 3,059 06 |
| To Seymour Case, " " " 1875 | 7,500 00 |
| To amount received on town notes | 5,000 00 |
| | $20,089 29 |

84

Cr.

| | |
|---|---|
| By amount paid on town notes | 3,618 57 |
| By State and commutation tax | 1,064 88 |
| By county tax | 640 62 |
| By coupons town bonds | 2,538 00 |
| By selectmen's school orders | 2,427 82 |
| By selectmen's general order | 6,795 88 |
| By balance in treasury | 2,993 52 |
| | $20,089 29 |

S. J. MILLS,
*Treasurer.*

Bloomfield, September 3, 1876.

*Report of the Selectmen of the Town of Bloomfield for the Year Ending October 1, 1877.*

Interest paid on town notes.

| | |
|---|---|
| 15 persons, by name, with the amount paid to each, [aggregating] | $2,868 90 |

Paid principal on old notes.

| | |
|---|---|
| 2 persons, by name, with the amount paid to each, aggregating | 8768 58 |

For schools.

| | |
|---|---|
| 12 persons, by name, with the amount paid to each, aggregating | 2,462 87 |

85.

Assessor's & board of relief list of 1876.

| | |
|---|---|
| 3 items, aggregating | $131 95 |

Sheep killed by dogs.

| | |
|---|---|
| 7 items, aggregating | $103 46 |

Paupers.

| | |
|---|---|
| 5 items, aggregating | 672 00 |

Bridges.

| | |
|---|---|
| 16 items, aggregating | $1,904 31 |

General expenses.

| | |
|---|---|
| 40 persons, by name, with the amount paid to each, aggregating | 657 46 |
| | $9,569 53 |
| Amount of orders drawn on treasurer for year ending Oct. 1st by selectmen | 9,569 52 |

Indebtedness of the town.

| | |
|---|---|
| Oct. 1st, 1877, by notes | $13,816 38 |

Due on rate bills.

| | | |
|---|---|---|
| From John W. Spencer, special collector | | $519 58 |
| " T. E. Moore, lists of 1872 | | 952 88 |
| " " " 1873 | | 2,122 93 |
| " " " 1874 | | 2,683 34 |
| 86 From Seymour case, list of 1875 | | 3,965 11 |
| " " " " 1876 | | 9,075 25 |
| | | $19,319 09 |
| Amount overpaid by treasurer | | 957 69 |
| | | $18,361 40 |
| Outstanding town orders | | 2,655 74 |
| Due the town | | 15,705 66 |
| | | $28,410 72 |

H. B. CASE,
ELI BROWN,
*Selectmen.*

*Treasurer's Report.*

S. J. Mills to Town of Bloomfield. Dr.

| | | |
|---|---|---|
| To balance of account | | $2,993 52 |
| To amount received from town deposit fund | | 154 33 |
| " " civil list funds | | 466 50 |
| " " county commissioners | | 100 00 |
| " " H. B. Case, selectman | | 40 09 |
| " " J. E. Palmer, Esq. (fines) | | 7 00 |
| " " Thos. E. Moore, col. list 1872 | | 104 73 |
| " " Seymour case, " 1875 | | 1862 77 |
| " " town notes | | 4,977 79 |
| | | 11,077 64 |
| Amount overpaid by treasurer | | 957 69 |
| | | $12,035 33 |

Cr.

| | | |
|---|---|---|
| By amount paid town note and interest | | 424 10 |
| " " State & commutation tax | | 1,936 16 |
| 87 " " coupons, town bonds | | 2,538 00 |
| " " justices' order, J. E. Palmer | | 28 78 |
| " " selectmen's orders | | 8,308 29 |
| | | $12,035 33 |

S. J. MILLS,
*Treasurer.*

Bloomfield, Sept. 27th, 1876.

*Report of the Selectmen of the Town of Bloomfield for the Year Ending October 1, 1878.*

Interest paid on town notes.

| | |
|---|---|
| 13 persons, by name, with the amount paid to each, aggregating | $2,562 85 |

For schools.

| | |
|---|---|
| 9 persons, by name, with the amount paid to each, aggregating | $2,630 00 |

Assessor's and board of relief lists of 1877.

| | |
|---|---|
| 3 items, aggregating | $116 25 |

Paupers.

| | |
|---|---|
| 7 items, aggregating | $612 75 |

88

Roads and bridges.

| | |
|---|---|
| 17 persons, by name, with the amount paid to each, aggregating | $1,985 91 |

Killing dogs.

| | |
|---|---|
| 5 persons, by name, with the amount paid to each, aggregating | $9 00 |

General expenses.

| | |
|---|---|
| 28 persons, by name, with the amount paid to each, aggregating | $388 41 |
| Amount of orders drawn on treasurer for year ending Oct. 1, 1878 | 7,705 44 |

Indebtedness of the town.

| | |
|---|---|
| Oct. 1, 1878, by notes | $48,416 28 |

Due on rate bills.

| | | |
|---|---|---|
| From J. W. Spencer, special collector | $481 21 | |
| Thos. E. Moore, list of 1872 | 952 88 | |
| " " " 1873 | 1,797 41 | |
| " " " 1874 | 2,548 44 | |
| From Seymour Case, list of 1875 | 3,511 42 | |
| " " " 1876 | 1,830 57 | |
| " " " 1877 | 8,726 31 | |
| | $19,848 24 | |
| Balance in treasury Oct. 1st | 827 67 | |
| | **$20,675 91** | |

| | | | |
|---|---|---|---|
| 89 | Outstanding orders | 2,661 83 | |
| | Due the town | | 18,014 08 |
| | Indebtedness of the town (except town bonds) | | $30,402 30 |

H. D. NEARING,
E. W. PINNEY,
I. N. WELLES,
*Selectmen.*

*Treasurer's Report.*

S. J. Mills to Town of Bloomfield.

| | | | |
|---|---|---|---|
| To amount received from town deposit fund | | | 336 14 |
| " " " | school fund | | 283 00 |
| " " " | civil list funds | | 424 50 |
| " " " | county commissioners | | 100 00 |
| " " " | S. B. Newberry, Esq. (fine) | | 1 00 |
| " " " | S. J. Mills, justice (fine) | | 7 00 |
| " " " | town clerk (dogs) | | 233 00 |
| " " " | W. J. Spencer, special col. | | 38 37 |
| " " " | Thos. E. Moore, col., list 1873 | | 325 52 |
| " " " | H. D. Nearing, Moore's list, 1874 | | 134 90 |
| " " " | H. D. Nearing, Case's list, 1875 | | 69 54 |
| " " " | Seymour Case, col., list 1875 | | 384 15 |
| " " " | " " " " 1876 | | 7,244 68 |
| " " " | town notes | | 5,600 00 |
| | | | 15,181 80 |

Bloomfield, October 1, 1878.

S. J. MILLS,
*Treasurer.*

90 At an adjourned annual town meeting held at the usual place January 4, 1869—

Voted, That the selectmen be directed to have the report of items of account printed yearly, 500 copies.

At an annual town meeting legally warned and held at the usual place Oct. 4, 1869—

The report of the selectmen, town treasurer, and school visitors read and accepted.

At an annual town meeting legally warned and held at the usual place Oct. 3, 1870—

The reports of selectmen and town treasurer being in printed form *was* not called for.

There is no record of any action of the town at any subsequent meeting with reference to the reports of the selectmen or treasurer, but the printed reports were, in fact, distributed at the subsequent annual town meetings to all in attendance.

91 EXHIBIT "B."

At a special town meeting legally warned and held at the lecture-room of the Congregational Church, in the town of Bloomfield, July 26, 1862—Elisha Moore, moderator; H. B. Case, town clerk—

Resolved, That the selectmen of the town of Bloomfield be empowered and directed to pay to each resident of said town that has since the last call of the President for 300,000 troops, or shall on or before the 20th day of August, 1862, enlist and be accepted in any regiment in the State in the service of the United States, the sum of one hundred dollars, and the said selectmen are hereby authorized to borrow the necessary money for this purpose, said number not to exceed sixteen men.

Resolved, That Imri A. Spencer be recommended as a suitable person to obtain recruits.

Voted to adjourn without day.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield Sept. 13, 1882.

The foregoing is a true copy of record.

Attest: JOHN E. COX, [SEAL.]
*Town Clerk.*

92 At a special town meeting legally warned and held at the usual place, Aug. 13, 1862—Elisha Moore, moderator—

Resolved, That the sum of one hundred and fifty dollars for three years men and one hundred dollars for nine months men be paid by the town of Bloomfield to each person resident of said town to a number equal to the unfurnished quota of said town required to fill the recent call for six hundred thousand men by the President of the United States, who shall hereafter enlist into the Connecticut regiments of volunteers or militia and be mustered into the United States service, and that the selectmen of said town be hereby authorized, empowered, and directed to pay said sum to any such person and to borrow the amount necessary.

Voted to adjourn without day.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 13, 1882.

The foregoing is a true copy of record.

JOHN E. COX, [SEAL.]
*Town Clerk.*

93 At a special town meeting legally warned and held at the usual place, July 18, 1863—A. D. McLean, moderator; H. B. Case, town clerk—

Voted, That the selectmen of the town of Bloomfield be, and hereby are, authorized, directed, and instructed to pay the sum of $300 as a bounty to each man drafted from said town into the service

of the United States, and liable to perform duty therein under the late order for a draft from this State, and that the said selectmen be directed, authorized, and empowered to borrow the sum of money necessary for the aforesaid purpose.

Voted, That the selectmen of this town, with J. E. Palmer, be requested and authorized to take competent legal advice as to the legality of the vote of this town just passed.

Voted, That if the doings of this meeting prove to be illegal the selectmen be directed to call another special meeting.

Voted, To adjourn without day.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 7, 1882.

The foregoing is a true copy of record.

Attest: JOHN E. COX, [SEAL.]
*Town Clerk.*

94 At a special town meeting, legally warned and held at the usual place, Aug. 1, 1863—George Newberry, moderator; H. B. Case, town clerk—the following preamble and votes were passed, viz.:

Whereas many of the citizens of this town liable to do military duty, who may be drafted into the service of the United States under the recent act of Congress "enrolling the national forces," are poor, and the families or dependents of such men as may be drafted may become a public charge to this town in case such should be compelled into the military service of the United States under the requisition of said act; Therefore,

Voted, That a sum not exceeding eight thousand dollars be, and the same is duly, appropriated by the Town of Bloomfield for the purpose of defraying all the necessary expenses which may be incurred by the said town under the provision of this series of votes.

Voted, That Elisha Moore, Lorenzo Burr, & Chauncey Newberry be a committee to draw orders on the treasurer of the town in sums not exceeding three hundred dollars each in favor of such persons as may be drafted from this town and liable to service under the before-mentioned act, who, in the opinion of said committee, require this pecuniary assistance for the support of their families and those depending upon them.

95 Voted, That the town treasurer be, and he hereby is, directed to pay all such orders as may be drawn as aforesaid by said committee.

Voted, That the selectmen be, and they hereby are, authorized to borrow such portion of said sum of eight thousand dollars as may be necessary to carry out the foregoing vote.

Voted, That the selectmen be, and they hereby are, authorized to fill any vacancies that may occur in said committee.

Voted, To adjourn without day.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 7, 1882.

The foregoing is a true copy of record.
Attest: JOHN E. COX, [SEAL.]
*Town Clerk.*

96 At a special town meeting, legally warned and held at the usual place, August 6, 1863—Gaylord Meacham, moderator; H. B. Case, town clerk—

Voted, That the selectmen of this town be, — hereby are, instructed, authorized, and empowered to pay from the treasury of this town a sum not to exceed three hundred dollars as a bounty to each person who shall hereafter volunteer and be accepted and mustered into the military service of the United States to satisfy, fill, and complete the quota of this town in the draft now going on in the 1st Congressional district of this State under the recent act of Congress "enrolling the national forces."

Voted, That the number of persons who shall be entitled to and who may receive said bounty shall not exceed the number necessary and liable to fill the quota of this town in and under said draft.

Voted, That the selectmen of this town be, and that they are hereby, authorized, empowered, and instructed to borrow the amount of money necessary to carry out the foregoing vote.

Voted, That N. F. Miller, H. B. Case, & Charles Barber be appointed a committee to procure and engage a suitable number of substitutes to fill the quota of this town.

Voted, To adjourn without day.

Attest: H. B. CASE,
*Town Clerk.*

97 Bloomfield, Sept. 13, 1882

The foregoing is a true copy of record.
Attest: JOHN E. COX, [SEAL.]
*Town Clerk.*

98 At a special town meeting, legally warned and held at the usual place, Sept. 12, 1863—George W. Gorton, moderator; H. B. Case, town clerk—the following preamble and series of votes were passed, viz:

Whereas sundry persons, residents of the town of Bloomfield, have been drafted into the service of the United States; and whereas the vast number that the Town of Bloomfield has already furnished makes it necessary that we should begin to look to our own interest at home and see that we have men enough left to perform the necessary labor for said interest:

Therefore voted, That H. B. Case, Bildad Rowley, & Chauncey Newberry be a committee to sign town notes for such a sum as, in their judgement, shall be proper, not exceeding three hundred dollars each, and deliver one of the same to each drafted man who shall be accepted by the board of examiners into the service of the United States, said number not to exceed our quota.

Voted, That should any of said committte refuse to act the selectmen shall be empowered to fill vacancies.

Voted, That said committee be, and they are hereby, authorized, empowered, and directed to sign the number and amount of notes described in the above vote in behalf of the town.

Voted, That when we adjourn we adjourn to next Wednesday at 4 o'clock p. m.

Voted, That [if] any one of the committee refuse to sign
99 those notes a majority may sign them and the same shall be legal.

Voted, To adjourn this meeting to meet at this place next Wednesday at 4 o'clock p. m.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 13, 1882.

The foregoing is a true copy of record.

Attest: JOHN E. COX. [SEAL.]
*Town Clerk.*

100 At an adjourned special town meeting held at the usual place, Sept. 16, 1863—George W. Gorton, moderator; H. B. Case, town clerk—

Voted, That the selectmen be directed to borrow enough — to take up those notes given by the committee, or what they may give hereafter, sufficient to fill our quota.

Voted, To adjourn to next Saturday at 4 o'clock p. m.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 7, 1882.

The foregoing is a true copy of record.

Attest: JOHN E. COX. [SEAL.]
*Town Clerk.*

101 At a special town meeting, legally warned and held at the usual place, July 30, 1864—Curtis H. Case, moderator; H. B. Case, town clerk—

Resolved, That the first selectman be, and hereby is, instructed to ascertain the number of men required of the town of Bloomfield in — next coming draft as soon as the fact may be ascertained, and to enlist men enough to fill said quota, and more, if thought advisable by the selectmen of the town, on as favorable terms as possible, and to use such part of the above appropriation as is necessary to fill said quota.

Resolved, That the selectmen are hereby authorized and instructed to borrow, on the credit of the town, such sum of money as may be necessary to carry out the above resolutions.

Voted, That T. G. Jerome, Eli Brown, & H. B. Case be a committee, with the selectmen, to arrange and draw names to fill our quota with substitutes.

Voted, To adjourn to Saturday, the 13th day of August next, at 4 o'clock p. m.

Attest: H. B. CASE,
*Town Clerk.*

Bloomfield, Sept. 13, 1882.

The foregoing is a true copy of record.

Attest: [SEAL.] JOHN E. COX,
*Town Clerk.*

102 I, Edwin E. Marvin, clerk of the circuit court of the United States for the district of Connecticut, do certify that the annexed papers are true copies of the original judgement record in the matter of The Charter Oak National Bank *vs.* The Town of Bloomfield, recorded and on file in said court.

In testimony whereof I have set hereto my name officially and the seal of said court at Hartford, in said district, this 10th day of September, A. D. 1883.

[Seal of Circuit Court — Connecticut.]

EDWIN E. MARVIN, *Clk.*

Endorsed on cover: Connecticut C. C., U. S. No. 376. The Town of Bloomfield, plaintiff in error, *vs.* The Charter Oak National Bank of Hartford, Conn. Filed 9th October, 1883.

# SUPREME COURT OF THE UNITED STATES.

No. 119.

## ADDITION TO RECORD.

(This addition should be inserted at the 8th line from the bottom of page 3 of the printed record.)

*Second count.*

1. The plaintiff, on June 21, 1879, lent to the defendant forty-four hundred thirty-three & $\frac{30}{100}$ dollars.

2. On said day the defendant made its promissory note of that date for said sum of $4,433.30, signed by S. J. Mills, treas., payable to the order of S. J. Mills three months after date, at Charter Oak National Bank, value received.

3. On said day said S. J. Mills endorsed said note to the plaintiff.

4. Said note is now the property of the plaintiff and has not been paid.

5. The defendant has not paid said sum so lent as per paragraph 1.

*Third count.*

1. The plaintiff, on July 1, 1879, lent to the defendant ninety-five hundred dollars.

2. On said day the defendant made its promissory note of that date for said sum of $9,500, signed by S. J. Mills, treas., payable to the order of S. J. Mills three months after date, at Charter Oak National Bank, value received.

3. On said day said S. J. Mills endorsed said note to the plaintiff.

4. Said note is now the property of the plaintiff and has not been paid.

5. The defendant has not paid said sum so lent as per paragraph 1.

HARTFORD, CONN., *Dec.* 8, 1886.

Hon. J. H. McKenney.

DEAR SIR: The matter upon the opposite page belongs to the record in the case of Town of Bloomfield *vs.* Charter Oak National Bank, No. 119, immediately following the first count, and should be so inserted to perfect the record.

Very respectfully,

E. E. MARVIN,
*Clerk U. S. Circuit Court, District of Conn.*

The correction above requested is agreed to.

HYDE, GROSS & HYDE,
*Att'ys for C. O. Nat'l Bank.*
CHAS. E. PERKINS,
*Att'y for Town of Bloomfield.*

[Endorsed:] Sup. Court, U. S. 1886, Oct. term. No. 119. The Town of Bloomfield, pl'ff in error, *vs.* The Charter Oak National Bank of Hartford, Conn. Stipulation of counsel & amendment to record.

[Stamped:] Office Supreme Court U. S. Filed Dec. 10, 1886. James H. McKenney, clerk.

121-121

# Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 119.

## Town of Bloomfield,

PLAINTIFF IN ERROR.

*VS.*

## The Charter Oak Nat'l Bank,

DEFENDANT IN ERROR.

IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

## BRIEF OF COUNSEL FOR TOWN OF BLOOMFIELD.

C. E. PERKINS.
A. F. EGGLESTON.

THE CASE, LOCKWOOD & BRAINARD CO., PRINTERS, HARTFORD, CONN.

# Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 119.

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THE TOWN OF BLOOMFIELD, *Plaintiff in Error*,

*vs.*

THE CHARTER OAK NATIONAL BANK, *Defendant in Error.*

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IN ERROR TO THE CIRCUIT COURT FOR THE DISTRICT OF CONNECTICUT.

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## BRIEF OF COUNSEL FOR PLAINTIFF IN ERROR.

### *Statement of Case.*

The town of Bloomfield in the State of Connecticut, was incorporated by the Legislature of that State in 1835, by a resolution by which in general terms it was "empowered to have and enjoy all the powers, privileges, and immunities which are enjoyed by other towns in this State." No grant of any specific powers was made to it.

October 5, 1868, Samuel J. Mills was elected Treasurer of the town, and continued to be re-elected until July 16, 1879, when he resigned. At the same town meeting at which he was elected, a vote was passed as follows: "Voted, that here-

after the town treasurer be authorized and empowered to borrow money for the use of the town." The statutes of the State required that the warnings of town meeting, "shall specify the objects for which such meeting is to be held." No evidence was offered by the plaintiff to show that the warning of this town meeting contained any reference to the passage of such a vote, but the defendant offered evidence to show that it did not. The court held that as it was not shown affirmatively that this subject was mentioned in the warning, the vote was invalid as an authority to Mills to borrow money for the town, but admitted it for other purposes.

In 1871, Mills without any authority from the town or its officers, unless this vote gave it to him, commenced to borrow money from the plaintiff bank, and gave to it notes of the town, and continued so to borrow and give notes until he resigned in July 1879, when, it was claimed, that he was a defaulter of moneys of the town to a large amount. Some of these notes he renewed and some he paid from the proceeds of the discount of other similar notes. At the time he resigned, there were outstanding but three of these notes dated in June and July 1879, amounting in all to about $20,000. Mills did not enter these notes as liabilities of the town on his treasurer's account, or give the town credit for the moneys received. He had given to the bank in all from 1871 to 1879, forty-eight notes, none of which were ever paid, except by renewals or discount of other notes, of these, twenty-nine went to protest, and he paid over five thousand dollars interest in advance. The amount at first was not large, but gradually increased till it amounted to $20,000.

The plaintiff claimed to have proved that some of these moneys borrowed were used to pay liabilities of the town, and the defendant claimed to have proved that this was not true, but if so, Mills had embezzled moneys of the town provided

to pay these debts, and used these borrowed moneys to cover such deficiencies.

The judge held that although the vote authorizing the treasurer to borrow was void, yet he admitted it in evidence subject to the duty of the plaintiff to prove that it had been ratified by the acts or conduct of subsequent town meetings, or that the town by such subsequent acts had created an estoppel *in pais*, which would prevent the town claiming that the vote was void, or that the vote in connection with these acts constituted a valid appointment.

The plaintiff then to show such ratification, estoppel, or agency, proved the following facts:

1. That Mills as treasurer between 1868 and 1879 had given forty four other notes to persons other than the plaintiff; all which notes had been paid.

2. Copies of the annual reports of the selectmen to the town from 1869 to 1879, which included the treasurer's reports, and the action of the town accepting these reports. They are printed on pages 22 to 38 of the record. It appeared that in 1869 these reports were read and accepted by vote of the town, but after that they were only printed and distributed at the annual town meetings, and no action was taken by the town upon them.

3. That on May 29, 1880, at a town meeting duly warned and held, the selectmen read to the meeting a list of evidences of indebtedness, partly signed by Mills as treasurer alone, and partly by him and the selectmen together, which list did not contain any of the notes given by Mills to the plaintiff, and the town voted to authorize the selectmen to substitute notes of the town for such obligations, which was so done, and these new notes so given were finally paid.

These were all the acts relied upon as constituting a ratification or appointment by, or estoppel upon the town. It was not claimed that the plaintiff ever knew of any of the proceedings or acts of the town before the notes in suit were given, or that it even knew of the existence of the vote of October 5, 1868, until February 22, 1877, or that any moneys were actually loaned to Mills as treasurer by the bank after that time, or that any was loaned in reliance upon said vote.

The plaintiff or its officers supposed or thought that Mills was authorized to borrow money for, and give notes for the town, but upon what they founded this supposition did not appear.

It was not claimed that the town, or any of its officers, except Mills, ever knew of any of these transactions between Mills and the bank. They neither appeared in the treasurer's books or in any of the reports made to the town by Mills as treasurer, or by the selectmen.

In the years 1862, '63, and '64, votes of the town had been passed authorizing the selectmen to borrow money for the purpose of paying bounties to soldiers, and give notes therefor, which votes were afterwards validated by the legislature of the State. The notes given for moneys so borrowed had always been reported to the town, or mentioned in the printed reports made by the treasurer and selectmen and distributed at the town meetings.

The plaintiff's suit is founded upon three notes, one for $5,500, one for $1,133.30, and one for $9,500, all dated in June and July, 1879, and all substantially in this form:

"Three months after date the town of Bloomfield promises to pay to the order of S. J. Mills, fifty-five hundred dollars, at Charter Oak National Bank, value received.

"S. J. MILLS, *Treasurer*.

"Endorsed, S. J. Mills."

The writ also contained the usual common money counts for money had and received. No questions arise upon the pleading.

At the trial, the defendant duly objected to the admission of the notes in evidence, also to the admission of the vote, also to the evidence offered to prove ratification by, or estoppel of the town or appointment by the town; but the objections were overruled, and exceptions were duly taken. At the close of the plaintiff's evidence the defendant again objected to the admission of the same evidence, and asked the court to direct a verdict for the defendant, on the ground that no legal authority had been shown for the execution of the notes or the borrowing the money, nor was there any sufficient evidence of ratification, estoppel or appointment; but the court refused so to rule, and the defendant duly excepted.

After the defendant's evidence was closed, the defendant by its requests to the court to charge the jury, again presented substantially the same questions, and duly excepted to the omission of the court so to charge, and to the charge as made.

The details of the requests and charges can be better referred to under the respective points. We believe no question arises as to the sufficiency of the objections or exceptions.

We think this statement of facts covers all those which are necessary to a full understanding of the case.

ERRORS.

There were six questions which arose in the trial of the case, and which are presented in different ways throughout the evidence and charge. The evidence was much of it matter of record, and almost the only contested question of fact was, whether or not the money borrowed was in fact used to pay debts of the town; but this was really of no importance,

for if the rulings and charge of the judge were correct, it was immaterial what was done with the money, and if they were incorrect, a new trial will have to be granted.

We think that all the errors complained of may be comprised under the following heads:

I. The judge erred in admitting in evidence the vote of Oct. 5, 1886, and in his charge relating thereto.

II. Also in admitting evidence, and in his charge relating to the town being estopped, to deny the validity of the vote.

III. Also as to the ratification of the vote by the town.

IV. Also as to Mills being appointed by the vote in connection with the acts of subsequent town meetings.

V. Also in his charge as to the construction of said vote.

VI. Also in his rulings and charge in relation to the power of the town to borrow money and to give notes therefor, and to delegate such power to any person.

Each of these errors will require separate discussion, and for convenience, instead of stating the requests, rulings, objections, etc., here, we have referred to them under these respective heads so far as is necessary.

## POINTS.

The plaintiff opened his case by offering in evidence the three notes declared on in the declaration. The defendant objected to their admission in evidence until the authority to execute them had been proved, and the court admitted them, subject to the obligation of the plaintiff to prove such authority.

The plaintiff for that purpose offered a vote of the town passed October 5, 1868, which read as follows:

"Voted, that hereafter the town treasurer be authorized and empowered to borrow money for the use of the town."

This vote was the only one ever passed on the subject, and it was admitted that if this did not, in some way, give the treasurer power to borrow money, and give the notes in question, the notes were inadmissible as evidence against the town.

It became necessary then to determine whether this vote was originally a valid one; if not, whether it had been validated in any way; and if so, whether, by a fair construction, it authorized the acts of the treasurer.

## I.

Was this vote originally valid?

The theory of the municipal organization of towns in Connecticut, like other parts of New England, is especially peculiar in this, that all corporate acts must be done in town meeting, at which all voters of the town are supposed to be present. The acts of a majority of the legal voters present, however, is considered to be the act of a majority of all the legal voters of the town, because notice of the meeting is given to all, in the manner prescribed by statute, not by sending actual notice to each voter, but by posting notices in certain places. As it would be often inconvenient and unnecessary for all voters to attend every meeting, the statute provides that the notice or warning of the meeting must contain a statement of all the business which is to come before the meeting, that every voter may know what is going to be

done, and decide whether it is important for him to be present.

The general statute in force in 1868 is found on page 138 of the revised statutes of Connecticut of 1866, § 232, and is as follows:

"The warning of every meeting of any borough, city, ecclesiastical society, school society, school district, or other public community, shall specify the objects for which such meeting is to be held."

Besides this general statute, a special statute as to town meetings will be found on p. 101, Revision of 1866, § 19, as follows:

"When town meetings are to be held, a notification, either written or printed, *specifying the objects for which they are to be held*, signed by the selectmen, or a majority of them, set upon the sign-post, or sign-posts, in the towns, at least five days inclusively before the meeting is to be held, shall be sufficient notice to the inhabitants to attend such meeting; and any town may, at an annual meeting, designate and determine upon any other place or places, in addition to the sign-posts, at which such notifications shall be set up in the same manner as is herein provided in regard to notifications set upon sign-posts; and whenever a town meeting shall be warned agreeably to the provisions of this section, the selectmen shall, in addition to the requirement herein named, cause a copy or duplicate of said warning to be left with the town clerk of such town on or before the day of such meeting, and the same shall be recorded."

The importance of this provision is obvious. Without it the whole property of the inhabitants of the town might be made liable for taxes laid or liabilities incurred at a town meeting when only a dozen persons were present, or else every voter would have to attend every meeting.

It has always been held by the courts in Connecticut that votes on subjects not mentioned in the warning were absolutely void, and not admissible in evidence; and, moreover, that before any vote of a town meeting would be received in evidence, the person presenting it must show affirmatively that the warning did in fact contain such a notice as authorized such vote to be passed. It was a condition precedent to the power of the meeting to pass the vote, and without it a vote of any town meeting on a subject not specified in the warning, however regularly called or met for the consideration of other matters, was no more than a vote of so many men met for a clam-bake.

In Hayden *vs.* Noyes, 5 Conn., 391, Chief Justice Hosmer says:

"By the act concerning towns, the mode of warning town meetings is specially prescribed. There is to be a notification in writing specifying the objects for which they are to be held, signed by the selectmen, and set upon the public sign-post or posts in the town at least five days before the meeting. A meeting not warned agreeably to the mode designated is no legal congregation of the town, and its acts in that capacity are void. If the object be to regulate the clam and oyster fisheries, that object must be specified in the warning in an intelligible manner. A notification to assemble a town meeting for a lawful purpose, duly specified, and to do other town business is, except as to the specification, as entirely exceptionable as if the town were warned to meet and do any business they should think proper. It is the purpose of the law not to prescribe a frivolous form, but to give substantial information. If the object of the meeting is specified, it will present a motive to the inhabitants to be present, and they will leave business, even if it be pressing, provided they feel an interest in the subject to be determined. On the other hand, if the subject is unimportant, and any of the inhabitants should feel no concern in the result, they may with safety pursue their ordinary business, and this certainly is matter of convenience."

In Willard *vs.* Killingworth, 8 Conn. 247, the case of Hayden *vs.* Noyes was approved, and the additional question arose whether a vote could be admitted in evidence until it had been shown that the subject was specified in the warning, and the court says:

"But it is insisted by the defendants in error that the plaintiff in error was bound to show that no such warning was given. The plaintiff on the other hand contends that it became the party seeking to enforce this by-law of the borough to show such a vote of the town as the law requires; and that such a vote of assent could not be shown unless it also appeared that the meeting at which it was passed was specially warned for that purpose. This doctrine I am inclined to adopt as being reasonable, and in analogy to general principles which govern such questions. The borough and the town are confessedly inferior corporations. They act not by any inherent right of legislation like the legislature of the State; but their authority is delegated and their power therefore must be strictly pursued. Within the limits of their charter their acts are valid, without it they are void. It having been established in the case of Hayden v. Noyes above cited that to render an act of a town precisely of this character valid it must appear that the meeting of the town had been specially warned for that purpose, and this not appearing on the doings of the town in this case, nor from any proof alinde to establish the fact, the judgment is erroneous. Perhaps it should appear on the face of the proceedings, but *at least he who seeks to enforce the act should prove such warning to have been given.*"

This has always been held to be the law in Connecticut ever since.

Baldwin *vs.* North Branford, 32 Conn., 54.
State *vs.* Taft, 37 Conn., 399.

In the latter case the court says: "The court ought to have excluded the evidence from the consideration of the jury."

The only modification of the rule, if it can be called such, is in Isbell *vs.* R. R. Co., 25 Conn., 563, where the record of

the town meeting stated that the meeting was warned *for the purpose in question*, and the court held that such record was *prima facie* evidence that it was so warned. This does not affect the present case.

The claim of the plaintiff was that in the copy of the record of the vote sent to it in 1877, it was stated by the town clerk that the meeting was "duly warned" and that the town was estopped from denying that statement. So far as the question of estoppel here is concerned, it is clear that the town could not be estopped by the illegal and unauthorized statement of the town clerk, if any such had been made, but the statement that the town meeting was "duly warned" was true. It was duly warned for certain purposes, as an annual meeting, and for other purposes specified in the warning and the town clerk did not state that it was duly warned for this purpose. If he had, it could not have affected the town.

The defendants objected to the admission of this vote upon the ground that the plaintiff did not show affirmatively that the object of giving such power to the treasurer was specified in the warning, and also offered evidence to prove that in fact no such object was stated in it, and requested the court to charge the jury that if they found that no such notice was contained in the warning, the treasurer had no authority to borrow money under it.

The court, on page 17 of the record, charged the jury that this vote, standing by itself, was void.

"This vote, standing alone, did not give general authority to borrow money, and act as a general agent in that regard."

So far the court approved the claims of the defendant, but the error we complain of was committed by him in charging that this vote was rendered valid, and made sufficient authority by the acts of subsequent town meetings either as a ratifi-

cation of this vote, or by way of estoppel, or by such acts as made Mills an agent for this purpose without any vote.

II.

There was no estoppel upon the town which would prevent it from denying the authority of Mills.

This question was presented in different ways, but most clearly upon page 11 of the record, where, upon the plaintiff's resting his case, the defendant renewed his objection to the evidence, and also asked the court to direct a verdict for it, on the ground that there was no sufficient evidence of any estoppel. The objection was also taken by the request to charge on p. 15 of the record.

The evidence offered by the plaintiff to prove an estoppel was the same at that relied upon to prove a ratification of the vote of 1868 by the town, or to prove that the town had made Mills its agent by its acts.

It is found on pages 8 and 9 of the record, and for convenience of reference it is re-printed here, and is as follows:

"The plaintiff, thereupon, for the purpose of proving that the town had made the said Mills its general agent-in-fact to borrow money, and had, at its town meetings and by its affirmative acts in said meetings treated the treasurer as authorized under said vote to borrow money for the town offered in evidence forty four notes aggregating in all more than sixty-four thousand dollars, which have been made and executed by said Mills, as treasurer, on behalf of the town to sundry persons, mostly citizens of Bloomfield, other than the plaintiff between the time of the passage of said vote in 1868, and his resignation as treasurer in 1879, upon which there were endorsements of payments of interest from time to time, and all of which notes had been paid and taken up.

"The plaintiff also offered in evidence copies of the annual printed

reports from 1868 to 1879, inclusive, made by the selectmen of the town to the town in its annual town meetings assembled, together with the treasurer's annual report, as appears therein, and the records of the town meeting showing the action of the town thereon, a copy of which annual reports and records are annexed and marked Exhibit A. The several lists of payments of interest on town notes contained in said selectmen's reports comprise, among other items, the payments of interest upon the forty-four notes mentioned above. To this evidence the defendant objected as immaterial and irrelevant. But the court overruled said objection and admitted said evidence for the purpose hereinbefore stated, in admitting the copy of said vote, and the defendant duly excepted. The plaintiff, also, for the same purpose, offered the warning of and vote passed at a special town meeting passed on the 29th day of May, 1880, which are as follows:

"'At a special town meeting, legally warned, and held at the usual place, May 29, 1880, T. J. Jerome, moderator; John E. Cox, town clerk, the following preamble and accompanying resolutions were passed, viz.:

"'Whereas, certain parties have loaned money to the town of Bloomfield, in evidence of which they hold certain memoranda of indebtedness signed by the selectmen or other officers of said town, and all bearing date July 1, 1879, which loans are still outstanding and unpaid, and whereas it is advisable that said town give its notes for the same and cancel said memoranda of indebtedness.

"'*Voted*, That De Forrest H. Peck, Alfred N. Filley, and Edgar W. Pinney, selectmen, be, and they are hereby empowered and authorized, for, and in behalf of said town, and in the name of said town to make, sign, and deliver the promissory notes of said town bearing interest and payable at such time and at such rate of interest not exceeding five and one-half per cent. as to said selectmen may seem advisable to the parties aforesaid or to their order, and to take up and cancel the aforesaid memoranda of indebtedness.

"'Voted to adjourn.

"'Attest, JOHN E. COX, *Town Clerk.*'

"And also offered evidence to show that in pursuance of said vote the selectmen of said town did thereafter take up sixteen notes in number, signed by Mills as treasurer, amounting in all to twenty-

seven thousand three hundred and twenty-eight and $\frac{16}{100}$ dollars, and four others signed by said Mills as treasurer, and also by the selectmen, amounting to seventeen thousand eight hundred and fifty-six and $\frac{13}{100}$ dollars, and caused new ones to be given in their place.

"On July 1, 1879, when said notes were given, the various persons to whom said notes were given, and who previously held notes in the same several amounts against said town signed by Mills as treasurer, met the said treasurer at the town clerk's office, at which meeting the selectmen of said town of Bloomfield were present, and that the S. J. Mills as treasurer, then and there took up and cancelled the old notes which he had given previously to said several parties and gave new notes for the amount due them, reducing the interest to five per cent. per annum in renewal of, or substitution for, the notes previously held by said several parties. And these notes were subsequently all taken up or paid by selectmen under said vote of May 29, 1880."

An estoppel *in pais* is defined as follows, in East Haddam Bank *vs.* Shailor, 20 Conn., p. 21.

"Where one by his words or conduct willfully causes another to believe the existence of a certain state of things, and induces him to act on that belief so as to alter his own previous position, the former is concluded from averring against the latter a different state of things, as existing at the same time."

The most essential element of estoppel is that a person has acted *upon* his knowledge of the words or acts of another, in reliance upon their truth; and so here to make the acts of the subsequent town meetings an estoppel, it is necessary that the bank should have known of them, and acted in reliance upon them, in loaning the moneys in question.

But there is not only no evidence, but, no claim, that the bank ever knew of the acts of the subsequent town meetings which are relied upon, or that it loaned the moneys in question relying upon them.

It would be easy to show that none of the acts of the town meetings in question were sufficient to constitute an estoppel. The proceedings in 1880 were all later than the dates of the notes in question, but as the bank did not know of any of them, it is unnecessary to discuss these questions.

It may be claimed here that the mere existence of this vote, though void, upon the record of the town, estops the town from setting up its invalidity, and we will briefly consider the subject.

It is apparent that if this claim is correct, the whole effect of the statute requiring notice to be given is destroyed.

If a town meeting can pass any vote it pleases and make it valid by merely having it entered upon the records of the meeting, the statute is of little use. The question of its validity never could arise until some one had acted in reliance upon it, and according to this claim, so soon as any one acted in reliance upon it, it would be valid as to him.

It is well settled that a municipal organization cannot be estopped from setting up a fundamental want of power to do an act.

Marsh *vs.* Fulton Co., 12 Wall., 683.
Parkersburg *vs.* Brown, 106 U. S., 501.

A person dealing with such a body is bound to know its powers, and to learn whether the necessary conditions precedent to authorize its acts have been performed.

Scoville *vs.* Thayer, 105 U. S., p. 151.
Hannibal *vs.* Fauntleroy, 105 U. S., p. 413.

The statutes of this State provide that no action of a town meeting shall be valid on any subject not mentioned in the

warning, and before relying upon a vote, every one is bound to see that the subject was so mentioned.

Suppose no notice whatever of this town meeting had been given, it is clear that no valid vote could be passed upon any subject whatever.

But as to this vote it stands in the same situation as if no notice at all had been posted, the town had no power to pass it, and the bank was bound, before acting under it, to ascertain whether it was in the power of the town or not.

The principal authority relied on by the plaintiff below, was Railroad Co. *vs.* Chatham, 42 Conn., 465; but that case is entirely different from this.

There the legislature authorized the town to guarantee certain bonds, provided the vote was taken by ballot. A proper warning was posted calling for a vote by ballot, but when it was taken, it was not by ballot.

The court held that as the town had the power to guarantee, and had by its conduct and records asserted that all necessary formalities had been complied with, and the railroad company had acted upon that presumption, the town was estopped from alleging that those formalities had not been complied with.

It was in conformity with many decisions of this court upon municipal bonds.

But it is nowhere intimated in the opinion that if the whole proceedings of the town meeting were void for want of a sufficient warning, that the mere entering a vote on the records could have made an estoppel.

A later case of Brooklyn Trust Co. *vs.* Hebron, 51 Conn., 22, is more in point. There a town meeting had voted to guar-

antee bonds to a railroad company, but in consequence of defects in the warning both as to time of posting and want of mentioning the subject, the court held the proceedings void, and that the town was not and could not be estopped from setting up these objections. The court says that for want of a proper posting, there was no town meeting, no vote, and "absolutely nothing to consider"; and in relation to the want of notice of the subject in the warning, they say: "Every voter who read the call . . . might safely absent himself from the meeting in the certainty that under the call it could not impose the burden of a guarantee upon the town."

We submit that the judge erred in all his decisions relating to estoppel. He should have held that the town was not and could not be estopped from asserting the invalidity of the vote, and should have instructed the jury that there was no evidence of estoppel in the case. Instead of this he left the question of estoppel to be passed upon by them in the usual manner.

He also erred in refusing to charge the jury as requested that if the notes in suit were only renewal of notes taken by the bank before it knew of the vote, and not relying upon it, the principle of estoppel would not apply.

It was a contested question whether the bank advanced any money to Mills after February, 1877, when it first learned of the vote, or whether all the notes given after that time, including the ones in suit, were not merely renewals of old ones received by it before it had that knowledge.

The judge refused so to charge, and without spending time in discussing the point, we submit that this also was error. The refusal left the jury to infer that the knowledge of the vote subsequent to the bank's parting with its money, was a foundation for an estoppel.

III.

If the vote was void, and the town are not estopped from so claiming, was this vote so ratified or confirmed by the town as to become valid and binding on the town?

We say it was not, for several reasons.

1. Neither the town meetings, nor any of the officers of the town, except Mills, knew that there were any such sums borrowed or notes given by Mills as these in suit. The town certainly therefore could not have ratified his acts in giving these notes, for nothing is better settled than that ratification requires a knowledge of the acts done which are to be ratified.

Beneke *vs.* Ins. Co., 105 U. S., p. 360.

"No doctrine is better settled both upon principle and authority, than this: that the ratification of an act of an agent previously unauthorized must, in order to bind the principal, be with a full knowledge of all the material facts."

How could the paying or agreeing to pay other notes signed by Mills as treasurer, which were known to exist and to have been given in exchange for money actually received and used by the town, be a ratification of other notes given by Mills which were not known by the town to exist at all, and about which, therefore, there could be no intent to ratify?

2. It is as evident that a town by its *acts* cannot ratify and confirm a vote which was utterly void for want of a notice in the warning of the meeting when it was passed.

None of the town meetings referred to in this testimony could, by an *express vote* have ratified and confirmed the vote of October 5, 1868, because none of them were called for

that purpose. No notice of such business was given in any of the warnings of any of them, and it seems to us absurd to claim that a town meeting by its *acts* could ratify and confirm a vote, which it could not do by a specific vote for that purpose.

In American Tube Works *vs.* Boston Machine Co., 139 Mass., p. 5, the court say on page 11:

"It is difficult to see how any action at a corporate meeting can have a greater effect by way of ratification than a direct vote passed at such meeting would have; and a direct vote at any such other meeting than those hereinbefore referred to would have been invalid for want of due notice that the subject would be acted on."

The very theory of a town meeting makes it impossible for it *in any way* to do anything not mentioned in the warning of the meeting. Any other rule would destroy the effect of the statute. As it is, every voter knows exactly what the meeting can or can not do. He knows exactly the matters and the only ones which can come up so as to be acted upon at that meeting; but if it is to be held that the town meeting by its *acts* can ratify a void vote, and that, too, at a meeting not called for the purpose of ratifying that vote, or for any similar purpose, the whole effect of the statute is destroyed.

It is clear that if at any subsequent town meeting not called for that purpose a formal vote to ratify the vote of October 5, 1868, would have had no effect whatever.

In language quoted by this Court in Scovill *vs.* Thayer, 105 U. S., p. 150:

"This was a void agreement with a void acting upon it, a void recognition, and a void ratification by the acts which have been mentioned. It comes to an aggregate of nothings."

Certainly, if a formal vote could not confirm, acts like those in question could have had no greater power.

Where a person or a body has no power to do an act, except under certain conditions, an act void for want of such authority cannot be confirmed until authority is given.

The law on this subject is clearly stated by Mr. Justice Field in Marsh *vs.* Fulton County, 10 Wall., 678, on p. 684:

"A ratification is, in its effect upon the act of an agent, equivalent to the possession by him of a previous authority. It operates upon the act ratified in the same manner as though the authority of the agent to do the act existed originally. It follows that a ratification can only be made when the party ratifying possesses the power to perform the act ratified. The supervisors possessed no authority to make the subscription or issue the bonds in the first instance without the previous sanction of the qualified voters of the county. The supervisors in that particular were the mere agents of the county. They could not, therefore, ratify a subscription without a vote of the county, because they could not make a subscription in the first instance without such authorization. It would be absurd to say that they could, without such vote, by simple expressions of approval, or in some other indirect way, give validity to acts when they were directly in terms prohibited by statute from doing those acts until after such vote was had. That would be equivalent to saying that an agent not having the power to do a particular act for his principal could give validity to such act by its indirect recognition."

Daviess County *vs.* Dickinson, 117 U. S., p. 665.
Hayes *vs.* Holly Springs, 114 U. S., 120;
Norton *vs.* Shelby Co., 118 U. S., 451.

3. Even if the town at subsequent meetings, without any knowledge that this twenty thousand dollars of notes were in existence, could have ratified the vote of October 5, 1868, so as to make it available to the plaintiff, the evidence introduced for that purpose was clearly insufficient, but this claim can be better treated under the next point.

IV.

It may be claimed that the judge did not treat these acts of subsequent town meetings as technically a ratification of the vote of October 5, 1868, but as an original appointment by the town of Mills as an agent, with an unlimited power to borrow money and give notes of the town for it.

It it not easy to see exactly upon what ground the judge placed his ruling.

When the plaintiff offered this vote in evidence and the defendant objected to its admission, the court admitted it upon the following grounds (record, p. 8):

"The court overruled said objection, and admitted said vote in evidence *not as showing a legal or valid vote of said town*, but subject to the duty on the part of the plaintiff to prove that the town at its first meeting, by its affirmative acts and conduct, had *assented to and treated as authoritative* the power of the treasurer under said vote to borrow money for the use of said town."

This would seem to mean that the acts of the town ratified and confirmed the vote, by treating it as authoritative, but the judge continued:

"Or for the purpose of establishing that by the course of conduct of the town at its town meetings, it had practically established the authority of the treasurer under said vote; and of establishing an estoppel, etc."

This seems, also, to refer to a ratification of the vote. But when the judge came to the charge of the jury, he seems to put it a little differently. On page 17 of the record, folio 48, he says:

"The plaintiff next endeavors to show that, by the continuous and affirmative action and conduct of the town in its town meetings after this vote in respect to the known acts of the treasurer

under this vote in borrowing money and giving notes, which acts were reported annually to the town, the treasurer's general agency under this vote became, in fact, established and he was, in fact, their general agent for this purpose.

I charge you upon this point that subsequent to such an invalid vote as is in evidence in this case, a town can, by its continuous and affirmative action and conduct at its town meetings, in regard to the known acts of the specific agent, borrowing money generally and giving notes under said vote, which are annually reported to the town, establish and make him, in fact, their general agent for the purpose. It is for you to find, as a question of fact, whether the town did, by its continuous and affirmative acts and conduct, in regard to the known action of the treasurer in borrowing money, make him, in fact, their agent to do the same things which the vote purported to authorize him to do. You are to find whether or not the town at its town meetings, by its acts and conduct, did practically, as a matter of fact, authorize the treasurer to go on and do what the vote purported to authorize him to do. This is limited to the acts of the town in its town meetings, and it calls for some affirmative acts, and not simply what the town did not do. In order for you to find that the treasurer was practically invested with the powers which the vote gave him, there should be more than one single act of the town; there should, in my opinion, be a series of acts (unless, indeed, there should have been a legal vote ratifying the old vote), which should be of so positive a character as to satisfy the mind that the town did, knowing that the treasurer was borrowing money generally and freely, declare that he continued to be and was clothed with this authority.

From these instructions it would seem that the view of the judge was that the vote of October 5, 1868, *taken in connection with the acts of the town meetings, together* constituted a valid appointment of Mills as agent of the town with power to borrow money and give notes of the town for it.

If the vote was altogether and totally void, for the reasons already given, and had never been legally ratified, how can it be held to be a foundation for an appointment by the town?

If it did not itself legally make Mills an agent to borrow, it could not *partially* appoint him: so that taken with other acts, it constituted an appointment. It was either wholly good, so that it made an appointment, or wholly bad, in which case it was utterly ineffectual for any purpose whatsoever, unless it was legally ratified afterwards, or the town was estopped from denying its validity, in either of which cases it was sufficient of itself.

The judge does not consider the vote as valid; he says distinctly to the jury, it is a void vote, yet being so, you may take it into your consideration and see whether taken in connection with the acts of subsequent town meetings both together make a valid appointment.

It is also clear that the acts of subsequent town meetings not called for such a purpose, could not make a valid appointment. Whatever they might be, they were utterly ineffectual for any such purpose.

But if the vote was void and the acts were void, how do both put together bring about a valid appointment? It is only two void proceedings taken together.

Suppose these acts of subsequent town meetings had all taken place at the meeting when the vote was passed, could that meeting in that or any other manner have made a valid appointment? But the time when the acts were done can not affect the question.

The difficulty with the whole theory of the plaintiff's case and with the judge's rulings is, that neither that meeting, nor any other, could authorize Mills to borrow money unless notice of that action was put into the warning.

Whether we look at the actions of subsequent meetings as a ratification of the vote of October 5, 1868, or as a new authority, they are all void together.

*No* town meeting could give such authority in *any* way unless it had power to pass on the matter. As to this subject the town meeting stood in the same position as if it had never been warned at all, and it would hardly be claimed that the acts of a mere meeting of voters of the town which had never been warned, could be made valid, or affected by the acts of another meeting which also had not been warned!

But if it were possible to suppose that the acts of these subsequent town meetings, not warned for that purpose, *could* have any effect in confirming the first vote, or in making Mills the agent of the town to borrow money, yet there is nothing in the evidence offered which would be sufficient for that purpose.

It will be remembered that neither the town, nor any of its officers, except Mills, had any knowledge of these notes in question.

The evidence introduced by the plaintiff on this point, consisted of three items. First, the fact that between 1868 and 1879 Mills had made forty-four other notes amounting to sixty-four thousand dollars, which he signed as treasurer, and which had been paid. Second, that the selectmen had made annual printed reports to the town, which are in evidence. And third, that in 1880, the town by a vote authorized the selectmen to settle certain other notes which had been given by Mills.

The first and third of these pieces of evidence, clearly can have no bearing on the question. The mere fact that Mills had given and paid other notes is no act of the town meeting in its collective capacity, and cannot be considered an act of that body. The third being merely a vote, passed after Mills' resignation, that the selectmen be authorized to settle a specific list of claims, not including the notes in question, cannot

have any effect upon the notes in question, and so the judge says: (record, page 18.)

All that is left therefore, is the reports of the selectmen. These are printed (record, pages 22 to 38 inclusive), and show for themselves.

The only act of any town meetings relating to these reports is found on page 38, folio 90 of the record. In 1869, the reports for the preceding year were read and accepted, and the selectmen were directed thereafter to have 500 copies printed yearly. After this year, the town meeting *took no action whatever* as to these reports, they were merely printed and distributed.

The reports of the selectmen and treasurer (pages 22, 23, and 24, of record), merely shows that there were town notes outstanding to the amount of $27,100, and also gives the names of seventeen persons to whom interest was paid, and who were presumably the holders of these notes. It did not appear by the reports that any of these notes were signed by Mills as treasurer, nor did it appear but that all these notes were properly and legally issued under the votes found on pages 39 to 42 of record, and which had been validated by the legislature.

How can it be said that accepting this report had any bearing whatever upon a ratification of the vote of October 5, 1868, or upon the appointment of Mills as an agent of the town, to borrow unlimited sums of money?

The other reports are all of substantially the same character, but as no action was ever taken by the town in town meetings upon them, they can have no effect as *acts* of town meetings.

As matter of fact, it cannot be supposed that the town meetings had any idea that in accepting these reports they were appointing an agent with such unlimited powers to borrow money and give notes for it; especially as none of the meetings were warned for any such purpose. No such question arose or was passed upon at the meetings, nor were they called for any such purpose.

Even if these reports had shown that the notes named in them had been signed by the treasurer, their acceptance by the meeting would not be anything more than an approval of the accounts upon the supposition that all the proceedings mentioned had been proper and legal.

This question arose in the case of Benoit *vs.* Conway, 10 Allen, 528, and Bigelow, C. J., says, on page 531:

"The evidence of usage was immaterial. It did not show that the town had ever sanctioned by their votes the borrowing of money in their name and on their credit by the treasurer which did not go to the use of the town, but which was mingled with the treasurer's private fund and the approbation of which for the use of the town did not appear. Besides the usage went no farther than to show that the town on the rendition of the treasurer's annual account was accustomed to give its sanction to acts of the treasurer in borrowing money and giving and paying notes in behalf of the town during the year previous. This did not prove any authority in the treasurer to give notes binding on the town, but only a usage to sanction his acts in managing the financial concerns of the town if on hearing his statement at the end of the year they met with approval. No such sanction was given to the transaction with the plaintiff by which he obtained the note declared on, nor was the town bound by their previous usage to acknowledge the validity of the note."

The judge seems to have lost sight of the fundamental principle regarding the action of a town meeting, that it must be founded on a notice in the warning.

The meetings from 1868 to 1879 could not, all or either of them, have passed a vote appointing Mills an agent to borrow, yet according to the theory of the plaintiff although no one of them could make such appointment by vote, yet several could make it by their acts!

It may be true that individuals and private trading corporations may by their acts ratify an illegal appointment of an agent, or be estopped from denying its legality, or possibly such acts may be sufficient evidence of an appointment having been made. The great difference is that in the case of a town meeting there is the essential prerequisite to *any action* on such a subject, that the meeting must be called for that purpose. If every one of these town meetings had passed a vote ratifying the vote of October 5, 1868, approving all that Mills had done under it, and specifically agreeing to pay these notes to the Charter Oak Bank, no one of them would have been valid or admissible in evidence, because they would all have been so much waste paper — an essential element to the validity of every vote would have been wanting.

Nor could any one have been deceived or misled by such votes, either the original or the ratifying ones. Every one dealing with a town is bound to know that a town meeting cannot act on any subject unless notice is properly given in the warning, and that it is necessary to look behind every vote to see whether it is valid. It is as if every vote contained the clause "this vote is only to take effect provided the meeting is properly warned."

If then neither the vote of October 5, 1868, nor the acts of subsequent town meetings could have any legal effect in appointing Mills the agent of the town to borrow money and give notes, the judge clearly erred both in admitting the evidence and in his charge.

V.

We submit further that the vote in question, by a fair construction, even if it had been valid, did not give to Mills such a power to borrow money and give negotiable promissory notes therefor as warranted a recovery in this suit.

The vote was as follows:

"Voted, that hereafter the town treasurer be authorized and empowered to borrow money for the use of the town."

This is susceptible of two meanings; that hereafter the town treasurer be the proper person to borrow money, when any is to be borrowed; or, that hereafter the town treasurer may borrow all the money *he* thinks fit and make the town liable for it.

We say the first of these two is the only reasonable construction which can be given to the vote.

To construe a written instrument, the surrounding circumstances are to be taken into consideration. The court should put itself into the position of the members of the town meeting when the vote was passed and see what it would naturally seem to them to mean.

It appears that by prior votes of the town the selectmen had been authorized to borrow money for the use of the town for certain purposes and to certain limited amounts and give notes therefor, which votes though illegal in themselves had been validated by the Legislature.

Under these circumstances a vote was offered that thereafter the *treasurer* be authorized to borrow money for the use of the town.

The natural and only reasonable construction to be given to this vote under such circumstances would be, not that the town was giving to the treasurer an unlimited power to borrow all the money he saw fit, but that whenever money was to be borrowed, it should be the treasurer and not the selectmen who should act as the agent for that purpose.

Does anyone suppose that the members of that town meeting supposed that they were giving to one man a power to make their property liable to an unlimited extent without any necessity for the money or any restrictions of any kind?

No such vote could possibly have been passed, nor would any lender of money, in view of the limited power of towns, have been justified in so construing it, if it had been presented to him as a vote giving such authority. Even if a literal construction of the words might seem to give such power, the knowledge which every one would be held to have as to the powers of towns and their usual method of raising money by taxation, together with the extraordinary powers given would show him that such a construction was improbable.

In the case of the Evansville Bank *vs.* Kauffman, 93 N. Y., 273, it was claimed that a guarantee was unlimited, and the court say, pp. 283–4:

"To uphold this judgment we are required to hold that the plaintiff had a right to infer from the language of the letter and the circumstances of the case that the defendants, without any apparent motive for so doing had clothed Bingham Brothers with irrevocable authority to use their name in borrowing money at remote and multiplied points *for unlimited amounts, and unrestricted periods of credit.* . . . A transaction of such character would be so improvident and unnatural that to establish it in any case should require the strongest evidence, but especially so when it is claimed that such powers have been bestowed upon entire strangers. The unnatural confidence in others, and the careless assumption of obligations which such a course of business would

power to borrow, its meaning should not be extended by implication so as to authorize him to give negotiable promissory notes of the town therefor.

The danger of allowing such a power to municipal corporations, is so forcibly stated in Mayor *vs.* Ray, 19 Wallace, p. 477, and Clairborne Co. *vs.* Brooks, 111 U. S., p. 400, that it is unnecessary for us to dwell upon it.

A vote of a town will not be construed to give such a power unless it is so clearly expressed as to leave no ground for construction.

This is a vital question in this case, for the whole trial turned upon these notes. Although the common counts were in the declaration, yet the question of the liability of the town to repay the bank moneys which had been actually received by the town, did not arise, except incidentally. All the instructions and rulings of the court were directed to the validity of the notes, and the question as to whether the moneys were actually received by the town was not left to the jury as a sufficient foundation for their verdict.

We submit there was error in the judge's decisions on these points, and a new trial should be granted.

## VII.

If we are wrong in all these claims, there is yet another point raised by us upon the trial, and overruled by the court, which is decisive of the case, and that is, whether the town had any power to borrow money at all, or to authorize Mills to borrow it and give notes therefor.

The defendant objected to the admission of the notes and vote of October 5, 1868, upon this ground, record, p. 11: "Also upon the ground that the town, as a municipal corporation, had no inherent power to borrow money or give notes therefor, nor had any special authority therefor been proved, etc," and also (record, p. 16) requested the court to charge to the same effect. The court overruled both claims, and exceptions were taken.

This raises the question distinctly, and it is evidently a vital one in the case, for assuming, as we do in this part of the case, that the vote is to be construed as giving to Mills power to borrow any amount he thought fit, and give notes therefor, and making the town liable to pay such sums, whether it ever received them or had the benefit of them or not, if the town had no power to pass such a vote, the whole of the plaintiff's case fails.

1st. We submit first, that the town of Bloomfield had no power to borrow money.

It is fundamental law that all corporations, and especially municipal organizations, have no powers but those that are given them, either directly or by necessary implication by the legislature, and also that all persons dealing with such organizations are assumed to have full knowledge of their actual legal powers.

It will not be claimed that the legislature has ever given to the town of Bloomfield the power to borrow money, except so far as it once confirmed certain illegal votes for limited amounts and for special purposes. And the only question will be as to whether the statutes of the State have imposed upon towns such duties that a power to borrow may be implied as a necessary method of performing such duties.

The act incorporating Bloomfield merely provided that it should have the same "powers, privileges, and immunities which are enjoyed by other towns in this State."

The question as to the powers of towns in the State of Connecticut have been fully considered and settled by the Supreme Court of that State.

There had been an impression that towns in New England, and especially in Connecticut, had certain mysterious and extraordinary powers, differing from those of common municipal organizations; that, from long usage, there had grown up a kind of common-law power, so that the inhabitants of a town met together in town meeting could do almost anything they pleased not contrary to express statutes. This view, however, was entirely exploded by the Supreme Court of the State in the case of Webster *vs.* Town of Harwinton, 32 Conn., 131, where this subject was thoroughly discussed, and it was held that towns were mere municipal corporations constituted by the legislature, with such powers and duties as the legislature chose to give them, and the opinion ends by saying:

"And thus their powers, instead of being inherent or reserved, have been delegated and controlled by the supreme legislative power of the State from its earliest organization. And such is the law, as uniformly recognized in this court."

So in Willard *vs.* Killingworth, 8 Conn., 254, the court says of towns:

"They act not by any inherent right of legislation, like the legislature of the State, but their authority is delegated."

And in Abendroth *vs.* Greenwich, 29 Conn., 363:

"Towns, like other corporations, can exercise no powers except such as are expressly granted to them, or such as are necessary to

enable them to discharge their duties and carry into effect the objects and purposes of their creation."

Booth *vs.* Woodbury, 32 Conn., 118.
New London *vs.* Brainard, 22 Conn., 552.
Higley *vs.* Bunce, 10 Conn., 442.
Hayden *vs.* Noyes, 5 Conn., 391.
State *vs.* Tyler, 48 Conn., 158.

We may assume, therefore, that towns in Connecticut are to be governed by the same rule as that so often applied to municipal corporations by this and other courts, viz., they have no powers but such as are given to them by express terms or necessary implication.

If, then, they have the power to borrow money, as it is not claimed that it has been given to them expressly, it must be because it is a power "necessary to enable them to discharge their duties."

What, then, are the duties of towns in Connecticut? They have power to make by-laws for certain purposes, to elect officers and perform certain duties relating to electors and elections, and to do many unimportant acts, such as maintaining a public cemetery, hearse, offer bounties for wildcats, etc. But the principal duties imposed upon them are four: 1st, to support schools.

2d, to support paupers.

3d, to build and maintain highways and bridges.

4th, to support schools.

For the purpose of raising money to enable towns to perform their duties, they are authorized to lay and collect the necessary taxes, and it is provided by statute that if the town shall neglect to lay the necessary taxes its selectmen may make a rate bill upon its last list for so much money as is necessary, and collect it as if it were a tax duly laid by the town.

In 1868, when this vote was passed, the provision on this subject was as follows, Revised Statutes of Connecticut of 1866, p. 102, § 32:

"Towns shall grant annual taxes on the assessment list last made out according to law, or on the assessment list which shall next thereafter be completed by the assessors and board of relief, *sufficient to defray all lawful and necessary expenses incurred by them*; which taxes shall be payable within one year after the same are granted; and if any town shall neglect or refuse to grant proper and necessary taxes, when they shall have information from the selectmen of the want of such taxes, the selectmen may assess the inhabitants, and make a rate bill upon the list of the town last completed, for so much as is wanted to defray the necessary expense of the town, and cause the same to be collected in the same manner as taxes laid by the town are collected."

The town of Bloomfield, a small agricultural town, had to build and maintain highways, support its paupers, pay its officers, and to support schools, expenses few in number, easily calculated beforehand, and small in amount, and to pay them it was obliged to lay taxes annually in its public town meetings, where all expenses could be freely and publicly discussed, the amount required for the ensuing year known and determined upon, and the percentage of taxation considered and fixed in view of all these considerations, a most reasonable and judicious method of managing the finances of a town.

In State *vs.* Fyler, 48 Conn., p. 1 8, the court say:

"This court has repeatedly declared that towns have no inherent powers; none except such as they have either by express grant, or necessary implication. The State makes them its instrument in the administration of civil and criminal justice, in the construction and reparation of highways, in the maintenance of schools, and in the support of the poor."

"*The requirement of the legislature is that they shall raise by taxation* sufficient, and only sufficient money to defray the expense attend-

ant upon the discharge of duties imposed or the performance of acts permitted; this to be estimated with all convenient certainty."

Where is there room in this well-balanced system of collecting sufficient taxes to pay all the annual expenses, for an unlimited power to borrow money "*for the uses of the town*"?

That towns in Connecticut had no general power to borrow, further appears from the legislation on the subject. We have already shown that the moneys for these necessary expenses was to be raised by an annual tax. Until the war, this method had been all that was needed, but then it became necessary for towns to raise large sums for bounties and other purposes, and an act was passed authorizing them to borrow for certain specified purposes, and in certain limited amounts and methods which is found in Revision of 1866, pp. 92–3, § 2–3, as follows:

"SEC. 2. Whenever any town shall have made appropriations, or incurred indebtedness for war purposes, or whenever any town, city, or borough, shall have incurred any expenses or liabilities according to law, or with the approval of the General Assembly, for any matter connected with, or growing out of the raising, equipment, or subsistence of volunteers or militia to serve in the armies of the United States, or whenever any town shall in like manner have made appropriations or incurred indebtedness for the relief or benefit of drafted men, such town, city, or borough may issue its bonds *or other obligations*, with or without coupons attached, payable at such time or times and at such annual rate of interest not exceeding six per cent. payable annually or semi-annually, as the corporation which may issue the same shall determine, but no such bond or other obligation shall be issued except in pursuance of a vote passed at a meeting of such corporation duly warned and held for that purpose, nor shall such corporation sell or dispose of such bonds or other obligations at less price than the par value thereof, or issue or have outstanding at any one time a greater amount of such bonds or other obligations than the amount of the expenses and liabilities incurred or appropriations made by such corporation for the purposes specified in this section."

SEC. 3. All bonds or other obligations which have been issued by any town, city, or borough by authority of law, and in the manner provided in the next preceding section, shall be binding and obligatory upon the corporation issuing the same, and such corporation shall be held liable for payment thereof and of the interest which may accrue upon the same according to the tenor of such bond or other obligation.

If it is true, as claimed by the plaintiff, that any town could borrow money whenever it pleased, and authorize any agent to borrow to an unlimited amount, why should such an act as this be passed, and especially why should it be guarded in this way?

The second section evidently relates not to issuing obligations for existing debts or liabilities; no doubt if a town was in debt, it could give an obligation evidencing it; but it provides that the bonds or other obligations shall not be sold for less than par. It is evident that they were to be issued and sold in the usual way, as a well-known method of borrowing money.

It limits the borrowing solely to pay liabilities already incurred for the prosecution of the civil war, provides that the corporation itself at a meeting especially warned for that purpose, shall determine the nature of the obligation, and even such a small matter as whether coupons shall be attached or not, and the price at which they are to be sold; limits the amount which may be outstanding at any one time to the liabilities incurred for those special purposes, and in the third section provides that obligations issued theretofore *in the manner so provided*, shall be binding, and impliedly that those not so issued shall not be; a provision clearly illegal if towns could have theretofore legally borrowed money and given obligations therefor at their pleasure.

Such minute and careful limitations and provisions upon the power given to towns to borrow, especially when coupled

with the express provisions hereinbefore referred to that they shall raise money for their necessary expenses by taxation, is the strongest evidence to prove that towns in 1866 could not borrow at their pleasure.

It is evident that if in 1866, it had been proposed to the legislature to pass a general law authorizing towns to borrow money at their pleasure at any time and to any amount, such action would have been negatived at once, and if any one had suggested that the act then passed was unnecessary because towns could already borrow as they pleased, it would not have been credited by any one. There is an especial reason in Connecticut why such unlimited power to borrow should not be given to towns, by construction.

In that State all the property of every inhabitant of the town, and all lands of non-residents can be taken for any debt of the town.

Beardsley *vs.* Smith, 16 Conn., 380.

If a town, therefore, can borrow all the money it sees fit, it thereby places an actual lien on the property of every inhabitant, and especially on the real estate, which cannot be removed till the debt is paid, and is equivalent to a mortgage.

This is a most important consideration, and will be seen to be more and more so, as we examine the other questions in the case.

This question has never risen in the State Courts of Connecticut, nor so far as we can discover in any New England State, except in Maine, where it has been held that no such power exists in towns, and this court can decide it upon the general principles applicable to such municipal corporations.

Since the decision of Ray *vs.* Mayor of Nashville, 19 Wallace, 475, the obvious good sense and wisdom of the

opinion in that case has caused it to be approved and followed by all the States where the question has arisen, except some of the western ones, and by all the text writers who have considered the subject.

Hackettstown *vs.* Swackhamer, 37 N. J. L., 191.
Parsons *vs.* Monmouth, 70 Me., 262.
Gunn *vs.* Clarkwell, 5 Dillon, 165.
1 Dillon Munic. Corp., p. 152, 3d Ed.
2 Daniels on Negotiable Instruments, § 1520.

It would be difficult to add anything to the reasons so forcibly and clearly presented by Mr. Justice Bradley and Chief Justice Beazley in the cases cited; but it may be said that those reasons have even more weight in the case of a town like Bloomfield, than in that of a city like Nashville or any large municipal organization authorized to build expensive water-works, city halls, and other public buildings, and incur very large expenses. It might be claimed there with some force, that the authorizing such large sums of money to be expended, much more than it was usual or reasonable to raise at once by taxation, might imply a power to borrow for those purposes.

But in the case of a little agricultural town like Bloomfield there is nothing upon which it can spend more than a few thousand dollars a year, unless under very exceptional circumstances, like the war, when permission from, or ratification by, the legislature can always be obtained, and unless this court is willing to lay down the broad principle that there is no difference in this respect between municipal and trading corporations, that the power to spend money necessarily involves the power to borrow, there is neither reason nor authority for any such power in a town.

2. If, however, it should be the opinion of the court that the town of Bloomfield had any power to borrow money, we

submit that this was not an unlimited power to borrow whenever and to whatever amount it pleased, but only under special circumstances, for specific objects, and for necessary fixed amounts. A general vote to borrow an indefinite sum is void on its face, and every one examining it was bound to know that it gave no authority.

It is clear that the intent of the legislature was that the usual annual expenses of the towns should be raised by annual taxation, but the power claimed by the plaintiff would enable a town to carry on its affairs on credit without any taxes so long as it could find any one willing to lend to it, which would be as long as the entire property of the inhabitants of the town was sufficient to repay the loans.

None of the authorities which hold that a town may have a right to borrow go so far as this. They base the power upon the necessities of the case, that there may be circumstances in which it becomes necessary for a town to borrow to perform duties imposed upon it, and it is only where there is such necessity that there is such power.

If, therefore, the power only exists where there is such a necessity, and for a special purpose, a vote to borrow, to be legal, must show on its face that it is for that special purpose, or else it does not appear to be an exercise of a legal authority.

Any other rule would be giving to a town an unlimited power to borrow for any and every purpose which it saw fit, which would be equivalent to giving it an unlimited right of taxation.

Is was held in Loan Association *vs.* Topeka, 20 Wallace, 655, that even the legislature could not give a city an unlimited right to tax; and that a specific authority to borrow for a purpose for which they could not tax was void.

The power to borrow is in effect the power to tax in the case of municipal corporations which have no other way to raise funds to repay the money so borrowed except by taxation.

In Aspinwall *vs.* Davies County, 22 How. 378, Judge Nelson says:

"The power conferred upon the Board of Commissioners by the provisions in the charter, among other things embraced the power of taxation, this being the ultimate resort of paying both the principal and interest of the bonds."

If the doctrine of the plaintiff be correct, the city of Topeka needed no authority from the legislature, and could have easily evaded the rule laid down by this court. All they would have had to do would have been to have passed a vote to borrow $100,000 generally, issue notes or bonds for the amount, pass it over to the corporation in question, and tax the community to pay *the money borrowed*, a tax which could not be resisted. All restriction on the power of municipal corporations to tax for any purpose they pleased, could thus be evaded and done away with.

It is well settled that where there is a limited power to borrow vested in a municipal corporation the lenders are bound to know what those limits are, in the absence of recitals in the bond or note which they may rely upon.

Anthony *vs.* Jasper County, 101 U. S., 693.
Hopper *vs.* Covington, 8 Fed. Rep., 777.
Buchanan *vs.* Litchfield, 102 U. S., 278.

Every one loaning money to a municipal corporation is affected with a knowledge of its legal power to borrow, and if there is a vote purporting to authorize it on certain conditions, they are bound to ascertain whether those conditions are complied with.

If, therefore, in this case, the town of Bloomfield might have had the power to borrow money for certain purposes or to certain amounts, a vote which fixed neither these purposes or amounts, but gave only a general power to borrow, could give no shadow of authority upon which a lender could rely. It was void on its face.

In Freeland *vs.* Hastings, 10 Allen, 571. it was held that a vote to raise a sum of money by taxation for "contingencies" taken alone, was void, and on page 576 the court says:

"A vote to raise money for contingencies only, without qualification or limitation, or any designation of the purpose to which the money is to be appropriated, if it was intended to embrace any considerable portion of the sum raised by a town, would be equivalent to a general vote to raise money. *But a town or city has no authority to pass such a vote.* Inasmuch as it can grant money only for certain specified and enumerated objects, unless these are in some way designated in the vote authorizing a tax, or otherwise declared or made known at the time of the grant of the money, there would be no means of ascertaining whether a town acted within the limits of authority granted to it by the legislature in voting the money, and no mode of restraining the agents of the town in its appropriation and expenditure. Every voter in a town has a right to know or have the means of ascertaining the purposes and objects for which money is proposed to be granted: otherwise he cannot judge of the necessity or propriety of the grant, or intelligently exercise his privilege of voting thereon. Every inhabitant who is liable to assessment ought to have access to sources of information by which he can ascertain whether he is called on to contribute to objects which can properly be made a municipal charge or burden: *otherwise he might be subjected to unlawful exactions without the means of redress.* It is obvious, therefore, that the power of raising money by taxation delegated to towns, ought to be exercised by making specific grants or appropriations, and not by votes expressed in vague and indefinite terms, which give no indication of the purpose for which the money is to be appropriated and expended".

Argument is unnecessary to show how much more forcibly all these considerations apply to a case of a general vote to borrow *unlimited* sums for no specified purpose, than to tax for a limited amount where only the purpose was not named.

3. If, however, all this be erroneous, and a town can borrow to an unlimited amount without any purpose or amount being specified in the vote, it seems to us clear that it cannot delegate this enormous and extraordinary power to any individual. It cannot clothe one man with the power to borrow as much money as he pleases, for any purpose he pleases, and make all the inhabitants of the town liable to taxation to repay all the moneys so borrowed, without regard to the purposes for which they were obtained or used, or whether they were really ever received by the town or not.

It is well settled that a town cannot delegate any of its powers, the exercise of which are confided to its discretion and judgment, and especially the power of taxation.

What would be thought of a vote that the town of Bloomfield would lay a tax to such an amount as W. J. Mills thought was desirable?

In the case of a municipal organization, where the only method of raising money was by taxation, it would be bad enough; but in towns like those in Connecticut, where all the real and personal property of any inhabitant is liable at any moment to be taken and sold on a judgment against the town, to give such power to an individual would be still worse, and such as no court would imply. In this case the defaulting treasurer only borrowed $30,000 from one bank, but he could, for all that we can see, have borrowed as much more at each of a dozen more banks, and have swept away the entire property of all the inhabitants of the town.

Such a power never has been and never can be implied by a court from a theoretical necessity to borrow on the part of

a town, and whenever the question has arisen it has always been so decided.

State *vs.* Koster, 38 N. J. L., 308.

4. We have heretofore claimed that a proper construction of this vote did not authorize Mills to give notes like those in question; but if it be held that it does, then we insist that that part of the vote is void, because a town has no power to authorize such notes to be given, even by a direct vote.

The late case of Claiborne County *vs.* Brooks, 111 U. S., p. 400, so clearly disposes of the question that it is unnecessary for us to argue it.

The only limitation to the rule as there laid down is, where the statutes or decisions of the State where the town exists "*clearly show*" that such a power exists. There are no statutes on the subject in Connecticut, except those which we have hereinbefore referred to, and which impliedly prohibit such power, except in the cases therein referred to, and we know of no decision of the Supreme Court of the State holding that towns have such power. The question has never arisen. All that can be said is, that there are cases where towns have been held liable on notes issued by their authority; but no question of the power of the town to issue them was raised or decided, probably because in all the cases the town was liable to pay the amount in question, whether a note had been given or not.

As this whole case turned on the validity of the notes, and not on whether the town really had the benefit of the money, if for any of the reasons before stated the notes are invalid, there should be a new trial.

CHARLES E. PERKINS,
ARTHUR F. EGGLESTON,
*Counsel for Plaintiff in Error.*

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*Counsel for Plaintiff in Error.*

121-121

# Supreme Court of the United States.

OCTOBER TERM, 1886.

No. 119.

## TOWN OF BLOOMFIELD, Plaintiff in Error,

*vs.*

## CHARTER OAK NAT'L BANK, Defendant in Error.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

## BRIEF FOR THE DEFENDANT IN ERROR.

ALVAN P. HYDE, Of Counsel.

THE CASE, LOCKWOOD & BRAINARD CO., PRINTERS, HARTFORD, CONN.

# Supreme Court of the United States.

OCTOBER TERM, 1886.

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TOWN OF BLOOMFIELD, PLAINTIFF IN ERROR,

*vs.*

CHARTER OAK NATIONAL BANK, DEFENDANT IN ERROR.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CONNECTICUT.

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## BRIEF OF COUNSEL FOR DEFENDANT IN ERROR.

*Statement of Case.*

In this case the plaintiff below, the Charter Oak National Bank, brought suit against the Town of Bloomfield on three promissory notes of the town, signed by S. J. Mills, their treasurer.

The town denied that their treasurer had any authority to execute the notes on their behalf.

The bank thereupon offered in evidence the following vote of the town, passed October 5, 1868: "Voted, that hereafter the town treasurer be authorized and empowered to borrow money for the use of the town."

To the introduction of this vote the town objected, upon the

ground that it was incumbent on the bank to first show that the warning of the meeting authorized the vote.

It was admitted that the warning had not been recorded by the town clerk, as required by law, and no copy thereof was on file in the town clerk's office. Therefore the warning could not be produced.

It was further admitted that Mills was treasurer of the town when said vote was passed, and continued as such treasurer until the 16th day of July, 1879.

The court admitted said vote in evidence, not as showing a legal or valid vote of the town, but subject to the duty on the part of the bank to prove that the town, in its town meetings, by its affirmative acts and conduct, had assented to and treated as authoritative the power of the treasurer under said vote to borrow money for the use of said town, etc.

The vote having been admitted, for the limited purposes specified, by the court, the bank proceeded to offer evidence that from the time of the passage of said vote in 1868, till his resignation in 1879, said Mills, as treasurer, exercised the power apparently conferred by said vote. That during said period he executed, on behalf of the town as such treasurer, forty-four notes, aggregating over $64,000, mostly to citizens of said town of Bloomfield other than said bank. That the selectmen annually thereafter, in pursuance of a vote of the town, made to the town, in town meeting assembled, a printed report of the items of the accounts of the town for each year, in which appears, under the item of interest paid on town notes, the names of the several persons to whom said Mills had given the town notes, also the persons to whom notes so given had been paid. Also including annually the treasurer's report, in which it appeared each year that he was borrowing money on town notes. Also that in one year, A. D. 1871, he had paid to the said Charter Oak Bank $10,004.48. That it appeared by said selectmen's reports that the town was

indebted in a steadily increasing amount by town notes (though it is not claimed that any party other than said treasurer was authorized to borrow money for the town or execute notes), and that finally the town on May 29, 1880, recognized and paid all the notes then outstanding executed by Mills as treasurer, except the notes due the bank.

To this evidence the town also objected, but it was admitted.

Although the exceptions of the plaintiff in error are stated in various forms, yet it seems to us that they will all be resolved by the determination of these two questions:

1st. Was the vote of 1868 admissible, either with or without the limitation as to its effect, as stated by the Court.

2d. Was the evidence as to the acts of the town subsequent to the vote admissible, either as a ratification of the authority given to Mills by the vote to borrow money as treasurer for the town. Or as evidence that the town had held out Mills to the public as their general agent for this purpose, so as to estop the town from denying his authority.

## POINTS.

1. The vote of the town passed Oct. 5, 1868, was binding on the town, without proof of the warning.

2. The evidence of the action of the town subsequent to that vote was admissible to show that the town ratified the authority given to Mills as its treasurer by said vote.

3. The evidence that the town had held out Mills to the public as their general agent was admissible for the purpose of showing that the town was estopped from denying his agency.

4. Towns in Connecticut may borrow money for their use and authorize the giving of town notes therefor.

5. The town had power to authorize their treasurer as such to thereafter borrow money and issue notes, said authority to continue during the pleasure of the town or until revoked.

I.

We claim that the vote of 1868 was admissible, under the circumstances of the case, without proof of the warning, and was *prima facie* valid.

The vote having been spread on the public records of the town and suffered to remain, and the plaintiff having acted on the faith of its being a valid note, the burden of proof rested on the defendants to show that the vote was invalid under the warning.

In Hayden *vs.* Noyes, 5 Conn., 391, no question as to the burden of proof arose. The warning was in evidence, and its construction only before the court.

In Willard *vs.* Killingworth, 8 Conn., 248, the suit was in the name of the borough of Killingworth against defendant for taking oysters in the river and harbor in the jurisdiction of Killingworth, contrary to a by-law claimed to have been made by plaintiff.

Here the party which passed the by-law was seeking to enforce it and punish the defendant for an act which was otherwise legal. It differs greatly from the case on trial, where the plaintiff is seeking to recover on a contract entered into on the faith of a vote of the town, and the town is seeking to repudiate and deny the validity of its own vote and records.

In the case cited fairness would seem to require, as was held by Judge Dagget at the close of his opinion, p. 254:

"But at least he who seeks to enforce the act should prove such warning to have been given."

While in our case, the plaintiff, having acted on the faith of the validity of the vote which the town had caused to be spread upon its public records, it would seem that if the town would repudiate the vote, they should furnish the evidence, which was entirely in its control, of its invalidity.

Brunswick *vs.* McKean, 4 Greenleaf, p. 508.

This was a suit in trespass by a town against an individual.

It became essential for the plaintiffs to show that a part of an ancient highway had been discontinued. This they attempted to do by offering votes passed by plaintiff town discontinuing the highway. No reason, in fact, was assigned why copies of the warrants could not be and were not produced. The evidence on objection was rejected. The court, p. 511, says:

"According to the usual course of proceedings, these warrants were either recorded, or preserved, in the office of the town clerk. For anything that appears in the case, they might have been found, and certified copies obtained. No sufficient reason having been assigned why they were not produced, copies of the votes were, in our opinion, properly rejected."

Brownell *vs.* Palmer, 22 Conn., 107.

This was an action of trespass tried in 1851. Plaintiff offered a vote of the town discontinuing an old highway over the land in question, passed in 1825, at a meeting, as appears by the record, "legally holden by adjournment," and there was no further evidence that the meeting was properly warned. It was held that the jury had a right to presume that the meeting was legally warned for that purpose until the contrary was shown.

Thayer *vs.* Stearns *et al.*, 1 Pick., 109.

The defendants justified in an action of trespass as assessors of the town of Milford in 1819. Suit was tried in 1822. They showed by the records of the town that they were duly elected assessors at a town meeting legally warned. It was held that they were not bound to go behind the records and show that the proceedings of the warning officer had been regular.

Parker, J., p. 113, says:

"There must be some limitation to the right of inquiring into the regularity of proceedings by towns, or no officer would be safe in the execution of his duty; and we think, when it appears of record that a meeting has been regularly called, and the meeting has been held and the officers chosen at such meeting without any objection on account of deficiency in warning, that any anterior irregularity, provable only by parol, cannot vitiate the choice."

Ought not equal protection to be given to a party who has con-

tracted with and advanced his money to the town itself on the faith of its own records?

Isbell *vs.* New York & New Haven R. R. Co., 25 Conn., 556.

Action for injury to cattle of plaintiff by defendant company. Defendants set up that cattle were at large in violation of a by-law of town of Milford, and offered a copy of record, reciting that "at a special meeting of the inhabitants of the town of Milford legally warned and held," and "for the purpose of making a by-law," voted, etc. Held admissible without proof of the warning.

This case clearly recognizes the record of the clerk as the act of the town and binding upon it.

The vote thus spread on the records was not only *prima facie* evidence of the authority of Mills to act, but conclusive evidence in favor of the plaintiffs, who acted on the faith of its being a valid vote.

The N. H., M. & W. R. R. Co. *vs.* The Town of Chatham, 42 Conn., 465.

This was an application for a mandamus to compel the town to guarantee $40,000 of bonds of the plaintiff company. An act of the legislature authorized the town to guarantee the bonds by vote passed at a meeting called for that purpose, but expressly provided that the vote should be taken by ballot, and that the ballot-boxes should remain open for not less than two hours. The meeting was duly warned, specifying the purpose and that the vote would be taken by ballot. The vote was not taken by ballot, but by a division of the house and a count. The town clerk made a record that at a meeting "legally warned and held" it was "voted that the resolutions prescribed in the warning be adopted, Yes, 178; No, 86."

While the record remained in this condition the railroad company delivered, with requests or orders to the town to guarantee the same, their bonds to the amount of $40,000, the full amount specified in the vote of the town, to contractors who rendered services and furnished material in consideration thereof, relying

on the validity of said vote. Afterwards the town refused their guarantee, claiming that said vote was not legally passed. The railroad company, on behalf of the holders of the bonds, made the application for a mandamus. Thereupon one of the taxpayers procured from the same court a mandamus compelling the town clerk to correct the record by adding the words "Said vote was taken by a division of the house and a count, and not by ballot."

The court held that the town was estopped from denying their liability to guarantee said bonds, which had been negotiated before the record was corrected.

The court treated the record made by the town clerk as made by the town itself.

The court says, p. 477:

"The town intended that the record, taken together, should mean, and be understood by the public as meaning, that the resolutions were adopted by the number of votes and by the method of voting which would make its action effective in law. It permitted this record thus made to stand from October, 1871, to April, 1875, for the information of the public generally, etc."

And the court further says, on page 479, that in such a case

"Courts apply the principles of estoppel as strictly and with as much reason to municipalities and their inhabitants as to individuals. Society for Savings *vs.* City of New London, 29 Conn., 192, and cases there cited."

The case cited from the 29th Connecticut was a case where bonds which were issued by the city, under a vote claimed by the city to be void, fully sustains the last case.

The court say, see pages 192 to 194:

"The city had apparently, and really, complied with all the requisites prescribed in the resolution; and it may not now urge secret and collateral objections against these bonds, when there was not at the time a single circumstance calculated to excite doubt or suspicion. Could the maker of a negotiable note under like circumstances set up such a defense? We think not, and we do not see why the city of New London, or, if we look beyond the city to the citizens personally, why they should not be governed by the same rule of law.

"The proceedings of the city in issuing the bonds were well known to

all the citizens. We must consider them as conversant with the votes of April 14th and July 31st, and everything that was done under the votes; the issuing the bonds in the name of the city; the delivery of them to the New London, Willimantic & Palmer Railroad corporation for their use; the advertisement of them in the public papers; and the fact that they were bought by honest purchasers, from time to time, for the ultimate benefit of the citizens themselves. They knew, too, that the bonds were taken by the Treasurer of the State as security for the issues of bank paper. If all this was without authority, why, we ask, did not the citizens then make their objections? Why did they not enjoin the city agents from further proceedings? At least why did they not give notice to the public, and put purchasers on their guard, when they knew that a grievous loss must ensue if the bonds were unauthorized? We must believe that, after such acquiescence, it would be an outrage upon morality and justice, and an impeachment of the integrity of the citizens of New London, to allow the city to repudiate its obligations for such a cause. Many of the citizens, we well know, disapprove of and condemn such a repudiation, and we trust all of them would do so were it a simple transaction between man and man, where the culpability could not be thrown off upon a municipal corporation. But it is this very circumstance which enhances the impropriety of the act of repudiation, for the integrity of a public body is its principal virtue. To violate or impair this, is to undermine government itself, and to destroy the very institutions of the civil state. Such repudiation cannot receive the countenance of this court of justice. Hitherto repudiation has not anywhere been countenanced among us, and we trust it would not have received favor in this instance with any of the citizens of New London, had they carefully considered the consequences of the act, and the precedent they were establishing for other and less favored communities. The general doctrine of equitable estoppel, especially as to tax-payers, is most ably discussed and approved in the cases of The State *vs.* Van Horne, 7 Ohio S. R., 327; Knox County Commissioners *vs.* Aspinwall, 21 Howard, 539; Tash *vs.* Adams, 10 Cush., 252; Graham *vs.* Maddox, 6 Am. Law Reg., 595, 618; and Gould *vs.* Venice, 29 Barb., 442.

"Perhaps no one thing has done more to disparage the fair fame of our country abroad, or to impair the integrity of our institutions at home, than the loose sentiments which prevail in some parts of the land as to public and corporate indebtedness. It seems to be thought by some people, that as to obligations of this character, nothing more is called for from the debtor than what is agreeable, easy, and convenient. Honor, honesty, and punctuality are thought to be quite foreign to the subject. But this is a very great mistake, false and ruinous in the extreme. These virtues are as essential to public bodies as to individuals; and the nation, state, city, or municipality that does not observe and cherish them, has upon it a blight which will, in the end, destroy its best interests."

The foregoing cases hold that the records of the action of town meetings made by the town clerk are the acts of the town itself, and are not only *prima facie* valid as against the town, but in case parties have acted on the faith of their validity, the town will be estopped from denying their validity to the injury of such parties.

Again. The statutes of Connecticut, after providing for the warning of town meetings, reads as follows:

"And the selectmen shall cause a copy of every such warning to be left with the town clerk, on or before the day of such meeting, who shall record it."—Gen. St. Conn., Rev. 1875, page 83, Title 7, Chap. 1, Sec. 2.

This was not done, and no copy of the warning can be found.

The inability to produce the warning is no fault of the plaintiffs below, but wholly rests upon the town and its officers.

This neglect of duty by the town ought not to avail the town as against a party who has trusted their record as made, or to raise any presumption in favor of the town against the validity of their votes as recorded.

If the warning had been recorded, as required by law, this question would not have arisen. The record itself would have shown whether the vote was legal or not, and all parties would have acted with full notice and governed themselves accordingly.

Brooklyn Trust Co. *vs.* Town of Hebron, 51 Conn., pp. 22, 29.

It is well settled, especially by the decisions of our Connecticut courts, that the acts of an officer *de facto*, so long as he is suffered to act as such, are binding on the public and all parties in interest.

That an officer *de facto* is one who acts under color of an appointment or election although the appointment or election upon legal objection may be declared invalid. And that this principle

is applicable to both judicial and ministerial officers, and to both municipal and private corporations.

McCall *vs.* The Byram Mfg. Co., 6 Conn., 428, 435.
Plymouth *vs.* Painter, 17 Conn., 585, 589.
Monson *vs.* Hunt, 17 Conn., 566, 573.
Smith *vs.* The State, 19 Conn., 493, 498.
Douglass *vs.* Wickwire, 19 Conn., 489, 492.
The State *vs.* Brennan's Liquors, 25 Conn., 278, 283.
Hollister *vs.* Hollister, 35 Conn., 241, 247.

The principle involved in these decisions, and the reasoning on which they are based, apply in all respects and with full force to this case, where the treasurer, under the color of the authority given him by the vote, has, year after year, exercised the authority apparently conferred, with the full knowledge of the town and its inhabitants and without any objection from any source.

This doctrine of estoppel is fully settled in this court.

Anderson County Commissioners *vs.* Beal, 113 U. S., 227, 239, 240.

In that case it was attempted to be shown that the meeting authorizing the bond was not legally warned.

It is clear that if we are correct in the foregoing claims the defendant town has no cause to complain of the action of the judge below. His rulings and charge were more favorable to the defendant town than they were entitled to.

II.

The evidence offered by the defendants in error of the action of the town subsequent to the vote of 1868 was admissible, for the purpose of showing that the town had ratified the authority given to Mills, as its treasurer, by the vote of October 8, 1868.

The act to be ratified was the authorization of the treasurer

thereafter to borrow money for the use of the town; in other words, to act as general agent of the town for that purpose.

The ratification claimed consists of the fact that the town subsequently, from year to year, were informed that Mills was acting in pursuance of said vote, and, as treasurer, was borrowing money and issuing town notes, and with this full knowledge not only suffered the vote to stand, but by its conduct approved his action and recognized his authority.

"A municipal corporation may ratify the unauthorized acts and contracts of its agents or officers, which are within the corporate powers, but not otherwise. Ratification may be inferred from acquiescence after knowledge of all the material facts, or from acts inconsistent with any other supposition. *The same principle is applicable to corporations as to individuals.*"

1 Dillon on Municipal Corporations, sec. 385, and cases cited.

See, also, 2 Kent's Commentaries, 12th ed., p. 291, and cases cited in notes.

Davies *vs.* Mayor, etc., of City of New York, 93 N. Y., 250, 253–4.

"The general rule is unquestionable that a municipal corporation is not bound by the unauthorized act of an individual, whether an officer of the corporation or a mere private person. *But the corporation may so deal with third persons as to justify them in assuming the existence of an authority in another, which in fact has never been given.*"

Kinsley *vs.* Norris, 60 N. H., 131, decided June, 1880.

A party claimed to act as agent of the town, but it was denied that he was authorized to do the acts in question. It appeared that after he had acted he made report of his doings to the town, which report was duly accepted in town meeting.

The court held as follows, p. 133:

"If no previous authority was given, this action of the town *was a recognition of Kinsley as agent and a ratification of his agency.*"

These principles are not novel or exceptional but general, and we know of no decisions which controvert them.

III.

The evidence offered by the defendants in error, that the town had held out Mills to the public as their general agent to borrow money for the town, was admissible for the purpose of creating an estoppel of the town against denying his agency, either in connection with the vote offered or without the same.

Of course the vote of 1868, in connection with this evidence, gave point and force to the evidence.

But independent of the vote, the fact that the town, in view of the reports made to it from year to year, recognized, without objection or protest, the power and authority of the treasurer to borrow money on town notes, was a full recognition of his authority so to act and bind the town.

No question arises as to whether the evidence offered and admitted on the point of this claimed *estoppel in pais* was sufficient to justify the verdict of the jury. The only question is: Was the evidence admissible?

It will be noticed that in the charge of the judge he carefully excluded from the consideration of the jury any evidence, except the acts of the town in town meetings. Page 11 of record.

That individuals and private corporations may be bound by the acts of a person who assumes to act as agent, though he was never formally appointed or employed as such, simply by knowingly suffering him to act as agent, and by their conduct holding him out to the public as such, will not be disputed.

There would seem to be more reason for holding the inhabitants of towns barred by such conduct and representations than exists in the case of stockholders of private corporations.

Ordinarily a corporate liability can only be enforced against corporate property.

But inhabitants of towns in Connecticut are liable individually for the debts contracted by the town. They are parties *individually*, as well as in their corporate capacities, to all actions to which the town is a party, and executions upon judgments against the town may be levied upon the private estate of any of its inhabitants.

Beardsley *vs.* Smith, 16 Conn., 368, 380.
Union *vs.* Crawford, 19 Conn., 331, 333.

The reasoning of the court in the case of Society for Savings *vs.* City of New London, 29 Conn., 192, heretofore cited, is peculiarly adapted to the facts in this case.

We must consider the inhabitants of the town as conversant with the vote of October 5, 1868. They well knew from the printed reports, presented at their request at their annual town meetings, that the treasurer was acting under the authority of said vote. That every year he was borrowing money on town notes. That the town was annually paying interest on those notes, and from time to time paying the notes themselves. We may well ask, in the language used by that court, "if all this was without authority, why, we ask, did not the citizens then make their objections? Why did they not enjoin (the treasurer) from further proceedings? At least, why did they not give notice to the public?"

We can only reconcile the conduct of the town and its inhabitants with the admitted facts, upon the theory that they intended to confer on their treasurer the power specified in the vote and exercised by him, and intended the public to understand that he was acting with authority.

"After such acquiescence it would be an outrage upon morality and justice, and an impeachment of the integrity of the citizens" of Bloomfield, to allow the town to repudiate its obligations for such a cause.

In such a case "courts apply the principles of estoppel as

strictly, and with as much reason, to municipalities and their inhabitants as to individuals."

N. H., M. & W. R. R. Co. *vs.* Chatham, 42 Conn., 479.

"Where the officers of the corporation openly exercise powers affecting the interests of third persons, which presupposes a delegated authority for the purpose, and other corporate acts subsequently performed show that the corporation must have contemplated the legal existence of such authority, the acts of such officers will be deemed rightful, and the delegated authority will be presumed."

Supervisors *vs.* Schenck, 5 Wallace, 782.

## IV.

That a Connecticut town may borrow money for its proper use, and give its notes therefor, has never been questioned *hitherto*. Their power to borrow money is frequently an absolute necessity, owing to the duties devolved on them.

Nearly all expenditures for public purposes fall on the towns. They build and keep in repair all necessary highways and bridges. They erect and maintain asylums and poor-houses, and support and maintain paupers. They build school-houses and support the schools, establish and maintain cemeteries and hearses. Even in the case of a state tax, it is not laid upon the individual taxpayers, but levied on the towns in proportion to their grand list.

See General Statutes, State of Conn., Revision of 1875, page 161, chapter 2.

"SECTION 1. When the General Assembly shall grant a tax to be laid upon the general list of the state, last made and perfected, the selectmen of each town shall cause the amount of tax due therefrom to be paid to the state, on or before the twentieth day of March next ensuing; and if any town shall not pay such tax at such time, the treasurer shall issue an execution, returnable in sixty days, against the estate of its selectmen for the sum due, directed to the sheriff of the county in which such town is situated.

"SEC. 2. If such execution shall be returned unsatisfied, the treasurer shall forthwith issue an execution, returnable in sixty days, for the sum remaining due on said tax, with the officer's fees and charges before that time accruing, against the estate of the inhabitants of such town, to be directed as aforesaid."

It frequently happens that these necessary expenditures in a single year will largely exceed the annual tax, and the town is obliged to borrow the money to supply the deficiency. Probably there is not a town in the state which has not at some time borrowed money on town notes.

The right to borrow money and incur debts is fully recognized by our statutes.

See General Statutes of Conn., Revision of 1875, page 87.

"SEC. 17. When any town shall have made appropriations, or incurred debts, or shall hereafter make appropriations or incur debts exceeding ten thousand dollars, it may issue bonds, either registered or with coupons attached, or other obligations, payable at such times and at such annual rate of interest, not exceeding seven per cent., payable annually or semi-annually, as it shall determine; and shall designate the manner in which said bonds shall be issued, and the person by whom they shall be signed, and provide for keeping a record of the same."

"Express power to a municipal corporation 'to borrow money,' includes the power to issue its negotiable bonds, or other usual securities, to the lender."

1 Dillon on Municipal Corporations, sec. 83.

"Under authority to a city to borrow money, it may, if there be no statutory restriction, make the principal and interest payable at the place where the money is borrowed, or where it pleases, though beyond the limits of the State."

1 Dillon on Municipal Corporations, sec. 84.

See, also, Merrill *vs.* Monticello, 22 Fed. Rep., 589.
Great Falls Bank *vs.* Farmington, 41 N. H., 32, 36.

## V.

The town did not exceed its power in passing the vote of 1868, by reason of the fact that the authority conferred on the treasurer was not limited to their then treasurer, or to the term of office to which he was then elected.

Lumbard & Another *vs.* Trask, 9 Met., 557.

In that case certain lands in Springfield were vested in "trustees for the school fund for said town." On the 8th of May, 1810, the town voted "that the trustees of the school funds in said town be authorized and empowered to sell such parts of the land belonging to said town as the selectman shall and may by writing, under the hand of the major part of them, certify that it will be for the interest of said town to sell and dispose of." April 29, 1844, the then selectman gave the required certificate and the trustees made sale.

The court, p. 561, say:

"The terms of the vote may well embrace future boards; and the general object and purposes of the vote being better effectuated by such construction, we are of opinion that the power to sell under the sanction of the selectmen, conferred by the vote of the town, was not limited to the period of the continuance in office of the then present selectmen, but was intended to be a continuing power, and to apply to the successive boards of selectmen that might be in office; and that the vote of the town of May, 1810, being in full force and unrevoked, the trustees of the school funds were authorized, in the year 1844, to sell such part of the lands belonging to the town as the selectmen for that year should certify would be for the interest of the town to sell."

For the reasons above, we claim there is no error in the judgment below.

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